98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 98–
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# EXPORT ADMINISTRATION AMENDMENTS ACT OF 1983

JUNE 22, 1983.—Ordered to be printed

Mr. BONKER, from the Committee on Foreign Affairs, submitted the following

## REPORT

together with

## ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 3231]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 3231) to amend the authorities contained in the Export Administration Act of 1979, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### COMMITTEE ACTION

The Subcommittee on International Economic Policy and Trade considered the following bills amending the Export Administration Act of 1979 which were referred to the Committee on Foreign Affairs and subsequently to the subcommittee: H.R. 381, introduced on January 3, 1983, by Mr. Roe; H.R. 483, introduced on January 6 by Mrs. Byron; H.R. 1197, introduced on February 2 by Mr. McKinney; H.R. 1564, H.R. 1565, and H.R. 1566, introduced on February 22 by Mr. Bonker; H.R. 1877, introduced on March 3 by Mr. Berman; H.R. 2067, introduced on March 11 by Mr. Hamilton; H.R. 2278, introduced on March 23 by Mr. Leach; H.R. 2281, introduced on March 23 by Mr. McCollum; and H.R. 2500, introduced (by request) on April 12 by Mr. Roth (Executive Communication 822).

The subcommittee held hearings on February 24, March 1, 3, and 8, April 5, 12, 13, and 14, and closed briefings on March 15 (concerning Soviet bloc acquisition of Western technology) and on March 22 (concerning COCOM). On April 28 and 29 and May 2 and 4 the subcommittee met in open markup session to consider the above-mentioned bills, as well as H.R. 2761, a bill introduced by Mr. Bonker on April

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27. On May 4, the subcommittee approved H.R. 2761, as amended, for full committee action.

The committee held hearings on H.R. 2761 on May 5. H. R. 2971, a clean bill reflecting the subcommittee's action, was introduced on May 11 by Hon. Don Bonker, chairman of the subcommittee, and was referred to the Committee on Foreign Affairs. The committee considered H.R. 2971 in open markup session on May 18, 25, and 26. On May 26 the committee directed that a clean bill incorporating the amendments adopted by the committee be introduced. On June 6 Hon. Don Bonker introduced H.R. 3231, which was referred to the committee and reported favorably to the House. H.R. 3231 reflects the committee's action and recommendations on all the bills referred to above.

## Purpose

The principal purpose of H.R. 3231 is to extend and authorize funds to implement the Export Administration Act of 1979, and to revise procedures for administering controls on U.S. exports under the act for national security, foreign policy, and short supply purposes. The act is extended for 2 years (through fiscal year 1985), and funds totaling $24.600,000 are authorized to be appropriated for each of the fiscal years 1984 and 1985 to carry out export controls. The bill also establishes a new requirement for annual authorization of the Department of Commerce's export promotion programs (presently subject to a standing unlimited authorization). The bill authorizes $100,458,000 for each of the fiscal years 1984 and 1985 for export promotion programs. Fair employment requirements on U.S. firms operating in South Africa are established, and certain bank loans to South Africa and importation into the United States of South African gold coins are prohibited.

## Overview

The Export Administration Act of 1979 (hereafter referred to as "the act") provides broad authority for controlling the export from the United States to potential adversary nations of civilian goods and technology which could contribute significantly to foreign military capability if diverted to military application. Exports of munitions and nuclear technology are regulated on the basis of the Arms Export Control Act and Nuclear Nonproliferation Act, respectively, although some nuclear items are controlled under the Export Administration Act. The act also authorizes U.S. participation in the informal multilateral export control body known as CoCom (Coordinating Committee) in which the NATO countries (with the exception of Iceland) and Japan also participate.

The act also authorizes the President to regulate exports in order to further the foreign policy of the United States and fulfill its international responsibilities or to protect the domestic economy from excessive drain of scarce materials and to reduce the inflationary impact of foreign demand.

The policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any U.S. person is contained in this act. It prohibits any U.S. person from taking certain

actions with the intent to comply with, further, or support any such boycott. The provisions of the act pertaining to foreign boycotts were added by the Export Administration Amendments of 1977 (Public Law 95–52) and are extended without change by H.R. 3231.

In its 1979 review of the Export Administration Act of 1969, the Congress made substantial changes in the statute. Separate and distinct procedures and criteria were established for imposing national security and foreign policy controls. Precise time deadlines were set for the processing of export license applications. Development of a "militarily critical technologies list" (MCTL) was mandated, both as a means of reviewing the adequacy and focus of the existing Commodity Control List, and as a possible means of arriving at a more limited control list containing only the most militarily significant technologies. Foreign availability of goods controlled by the United States was, for the first time, made a factor in decisions to license such items for export.

Since these changes were made in 1979, the Committee on Foreign Affairs has exercised close and extensive oversight over implementation of the provisions, conducting some 17 hearings and briefings on licensing policy, procedures, and decisions on specific export license applications.

Some 200 categories of goods and technology, including technical data, covering more than 100,000 items, are presently subject to validated export license requirements under the act for national security or foreign policy reasons. Validated licenses, the device authorized by the act for controlling sensitive exports, are considered and granted or denied on a case-by-case basis, taking into account the intended end-use, the probability and likely effect of diversion to military use, and other factors. Applications for validated export licenses are being received by the Department of Commerce at a rate of about 75,000 to 80,000 per year.

Eighteen countries (listed in sec. 620(f) of the Foreign Assistance Act) are the destinations to which goods and technologies are controlled for national security purposes under this act. To deter reexports to these controlled countries from intermediate foreign destinations, controlled goods and technology must be licensed for export to most free world destinations as well.

The licensing system established under the act is used to implement total embargoes of several countries (Cuba, Vietnam, North Korea, and Kampuchea) pursuant to the International Emergency Economic Powers Act. Crime control instruments and equipment are subject to control for foreign reasons to countries which may engage in persistent gross violations of human rights. Certain other goods and technology are controlled to four countries (Libya, Syria, South Yemen, and Cuba) due to the support by those countries of international terrorism. The executive branch may, at its discretion, control particular goods and technologies for other foreign policy purposes. This discretionary authority has been used for such purposes as encouraging political and military stability in tense regions of the world, and furthering U.S. nuclear nonproliferation goals.

Case-by-case consideration of licenses, as well as the broad policy provisions of the act, allow considerable latitude to the executive branch to implement national security and trade policies. Export

policies and licensing decisions vary widely with respect to each of the 18 controlled country destinations. Export policy toward the Soviet Union, the major target of U.S. export controls, has varied from automatic denial of all controlled goods and technologies (in response to Soviet intervention in Afghanistan) to extensive approval of export license requests during the height of "détente" in the 1970's.

## Major Provisions and Issues

### PRESERVING NATIONAL SECURITY

The committee reviewed carefully the effectivenes of the act in protecting national security interests, particularly in light of increased reports of Soviet acquisitions of Western technology and the application of that technology to Soviet military systems. This review included not only public hearings, but classified briefings by theDepartment of Defense and examination of various reports issued by the General Accounting Office (particularly "Export Control Regulation Could Be Reduced Without Affecting National Security," GAO/ID-82-14, May 26, 1982, and "Details of Certain Controversial Export Licensing Decisions Involving Soviet Block Countries," GAO/ID-83-46, May 5, 1983). Overall, it is clear that most military significant technologies that are acquired by the Soviet Union and its allies from U.S. sources result from evasion of the Export Administration Act—from theft and illegal export—rather than faulty operation of the Export Administration Act or of the export licensing process.

In the cases in which U.S. technology was deliberately sold to the Soviet Union or another potential adversary country and allegedly made a significant contribution to that country's military capability, the committee found no case in which the licensing decision was not fully and carefully weighed in accordance with the terms and intent of the act. In most such cases, similar goods or technology had already been made available in significant quantities from foreign sources to render any continued U.S. controls pointless. In one instance, responsible executive agencies apparently failed to add a technology to the list of controls for a time, allowing its export to a controlled destination. Such an oversight, the committee believes, demonstrates the need for a narrowing of the scope of the controls so that the limited personnel and funds available for export control activities can be concentrated on proposed exports of the newer, more advanced technologies to potential adversaries. The need to process large volumes of routine license applications for exports to both allies and unfriendly countries under the current broad export control system increases the risk that newer technologies may fail to be noticed and brought under export controls promptly.

The solution to cases in which controlled goods and technology have apparently been obtained by illicit means, rather than through deliberate granting of export licenses, does not, the committee feels, lie in stricter licensing standards. It rests, instead, in more effective enforcement not only of export controls, but also of Federal and State laws prohibiting conspiracy, espionage, theft, and other relevant illicit activities that can serve to deter and block the theft of controlled technologies, whether by free-world competitors or potential adversaries.

H.R. 3231 responds in several ways to the need to improve further the effectiveness of export controls in the interest of protecting national security. Actions which constitute violations are expanded to facilitate enforcement. In particular, conspiracy or attempt to export illegally, evasion, and possession of goods or technology with intent to export illegally are made explicit violations of the act. Controls are authorized to be imposed on sales in the United States to foreign embassies and other extensions of the governments of controlled countries. Foreign embassies constitute a possibly significant source of leakage of controlled items to potential adversaries. The committee intends that the new controls authorized in this legislation be implemented by the Commerce Department and other agencies to which it may delegate enforcement responsibilities in the closest possible consultation and coordination with the Secretary of State, particularly with regard to the authorities and responsibilities of the Department of State under sections 202, 203, and 204 of the State Department Basic Authorities Act of 1956, as added by the Foreign Mission Act (Public Law 97-241).

The authorities of the Commerce Department to take enforcement actions are expanded to include execution of warrants, arrests, searches, and seizures of export shipments, and bearing of firearms in the course of enforcement activities. The bill thus provides enforcement officers of the Department of Commerce the same authorities that officers of the Customs Service have. The Customs Service plays an important role in export control enforcement based upon delegations of authority from the Secretary of Commerce to enforce this act and from the Secretary of State to enforce the Arm Export Control Act. While funding authority for customs enforcement activities is limited to $14 million (the executive branch request was $35 million), the Commerce Department authorization is increased from the executive branch request of $4.97 million to $15 million. These authorization levels reflect the committee's view that budgetary balance is needed between the two agencies (Customs and Commerce) most directly involved in export control enforcement, and that the Customs Service enforcement program, known as Operation Exodus, has not been very cost-effective. It has resulted in few prosecutions of serious violations under the Export Administration Act, while at the same time needlessly delaying many legitimate export shipments on the basis of indiscriminate detentions.

H.R. 3231 mandates the integration of the militarily critical technologies list into the Commodity Control List by 1985. Such integration would be effected on the basis of item-by-item agreement of the Secretaries of Defense and Commerce, and would make the MCTL operational for purposes of export license requirements and decisions. At the same time, however, the bill also encourages elimination of products from both lists on the basis of foreign availability and other considerations. The committee considers such ongoing elimination of lower technology items from control as essential to effective control of the more advanced, and therefore militarily significant, technologies.

The committee considered a provision in the subcommittee bill which would have given statutory status to the current executive branch policy of approving (with certain exceptions) export licenses

for the People's Republic of China up to approximately twice the technical level as those generally approved for the Soviet Union. This provision, however, was dropped without prejudice. At the time of the committee's action, Commerce Secretary Baldrige was visiting China, and had announced tentative executive branch plans to further liberalize export policy toward that country. The details of such a new policy were not available to the committee and were unclear. The committee decided that it would be inappropriate to establish a China export policy in legislation at a time when the executive branch's policy apparently was changing. The committee favors a further easing of export restrictions applicable to China, and to the placement of China in the same category as other friendly countries for purposes of export controls. The committee invited such action by the executive branch in authorizing the President, in the Fiscal Year 1984 Foreign Assistance Act Amendments (H.R. 2992), to remove China from the list of countries ineligible for U.S. assistance contained in section 620(f) of the Foreign Assistance Act, upon which the list of countries which are subject to export controls is based.

The bill would take additional steps to focus controls on the most significant technologies. It would eliminate licenses for exports to CoCom countries—presently about one-third of the total volume of license applications. The United States enjoys a veto over any export of an item on the CoCom Control List from a CoCom country to a controlled country, making U.S. license of the original export unnecessary and duplicative. The bill also directly removes from control such items as microprocessors which are imbedded in militarily insignificant products and which cannot be transferred to other uses. H.R. 3231 also requires annual review of unilateral U.S. controls and termination of controls with respect to destinations consistently approved for export. Such legislatively mandated streamlining of controls should serve as an example to the executive branch for further purging of the lists at executive branch discretion in order to allow greater attention to effective control of more militarily significant items.

### RESTORING EXPORT RELIABILITY AND COMPETITIVENESS

The committee's review of the implementation of the Export Administrative Act over the past 4 years, and the impact of the act upon U.S. export trade, leads to the conclusion that actions taken under the act, particularly for purposes of furthering U.S. foreign policy goals, may be the single greatest hindrance to U.S. exports, costing significant loss of U.S. jobs. Although imposed for good and even noble purposes, such as encouragement of human rights and freedoms and avoidance of excessive European dependence upon Soviet energy resources, these controls have created a pervasive belief in world markets that U.S. firms cannot be relied upon as suppliers particularly for larger projects which require long-term servicing, spare parts, and the like.

This crisis of confidence in the reliability of U.S. suppliers has not been confined to products and projects that have actually been disrupted by the imposition of U.S. foreign policy export controls, but by extension to virtually all U.S. products. It has been fueled by the reactions of foreign governments, business executives, and workers who

have resented the imposition of these controls extraterritorially upon products previously exported from the United States and firms affiliated with U.S. companies but located abroad and regarded as subject primarily to foreign laws. No other country attempts to impose export controls extraterritorially to the extent that the United States does, and the historical willingness of the United States to impose controls has led foreign buyers, manufacturers, and planners actively to avoid and eliminate dependence upon U.S. products and technologies, and has been exploited by foreign competitors.

Limiting the extraterritorial application of foreign policy controls and their impact on existing export contracts can be expected to improve multilateral implementation of export controls by CoCom nations. Although CoCom itself recognizes export controls only for national security purposes, use of foreign policy controls by the United States has been a serious irritant to U.S. allies and an obstacle to consensus within CoCom. The committee is encouraged by the initiatives the executive branch has taken within CoCom to increase enforcement efforts and make other needed procedural and administrative improvements in the CoCom institution. Recognition of the sovereignty of the CoCom partners with respect to goods and firms within their territory should contribute to the substantial strengthening of CoCom, with consequent benefits to the national security of the United States and its allies.

The cost in profits and jobs of America's growing reputation as an unreliable supplier in international markets cannot be precisely measured. The loss resulting from the controls on the export of gas transmission equipment for the Yamal pipeline alone was estimated to exceed $850 million in export sales and a minimum of 25,000 jobs. The indirect costs of such controls are probably at least as great as the direct effects.

The committee feels that a greater balance must be achieved between restriction of exports in the interests of foreign policy, and the equally important economic requirement that the United States remain reliable and competitive in international commerce. It therefore approved as part of H.R. 3231 a significant revision of Presidential authorities to impose foreign policy export controls designed to place greater emphasis upon the reliability of the United States as a supplier of exports. Under the bill, the President could, in the future, invoke new export controls for foreign policy purposes extraterritorially or in such a way to disrupt export contracts in force at the time of such new controls only with explicit approval of the Congress by law.

The only exception to the limitation on interrupting existing contracts would be for circumstances involving imminent or actual foreign acts of military aggression, nuclear test, gross violation of human rights, or acts of terrorism. To respond to such circumstances (short of a total embargo, which can be imposed pursuant to a U.N. resolution or a declared national emergency as defined by the International Emergency Economic Powers Act), the President could invoke immediate new controls on exports to a country engaging in such acts which could contravene existing export contracts without awaiting explicit congressional authorization. The committee recognizes that extreme and imminent crises (other than emergencies under the International Emergency Economic Powers Act) could arise that would necessitate rapid cutoff of certain trade with another country. The exception provided to the general restrictions on Presidential authority would assure that the President would be able to use the non-

military pressure of trade sanctions in responding to such crises, and to halt U.S. exports that would contribute directly to crisis situations. The provision would require that Presidential controls affecting existing contracts relate directly, immediately, and significantly to a crisis, and that they be lifted when the crisis ends.

The choice between unbridled use of export controls in the pursuit of foreign policy objectives, on the one hand, and limitation of that authority based upon recognition of the preeminence of foreign laws and existing private contracts, on the other, is painful. However ineffective they may have been in particular circumstances, foreign policy export controls at least have enabled the United States to separate itself from foreign policies and practices it has found reprehensible. Export controls communicate and concretely demonstrate U.S. opposition to such policies and practices more forcefully than mere rhetoric, even if they generally fail to reverse them.

At the same time, however, such controls (unless officially sanctioned by an international body, such as the U.N.-sanctioned controls against Rhodesia and South Africa) are almost always unilateral, and there is a limit to the cost that even the U.S. economy and working public can be expected to bear as a result. The committee concludes that those costs have become excessive, and, therefore, that some limits must be set on foreign policy controls. It believes that the provisions of H.R. 3231 provide a reasonable balance between the continued need for such controls in extreme situations, and the concurrent need in less serious circumstances to reduce their usage in order to help restore U.S. international economic and trade competitiveness.

H.R. 3231 seeks to encourage exports also by, for the first time, requiring authorization of funds for U.S. export promotion programs. This requirement, and authorization for fiscal years 1984 and 1985 of $100,458,000, the amount requested by the executive branch, are contained in title II of the bill. Export promotion measures are thus legally separate from the export control provisions contained in title I.

It is the committee's intent in the future to give greater attention to the nature, quality, and results of U.S. export promotion programs, and in providing periodic authorization of funds for these programs to provide greater direction and possible improvements to them.

### AGRICULTURAL EMBARGOES

In applying the principle of "sanctity" of export contracts to the authority for imposition of export controls for foreign policy purposes, the committee took note of the enactment in the last Congress of a provision protecting from export controls contracts for the export of agricultural products calling for delivery within 270 days. H.R. 3231 would afford comparable treatment to nonagricultural products (except goods and technology controlled to protect national security). However, 270 days is an insufficient time to provide reasonable protection for industrial contracts, many of which extend for a year or more, particularly for major projects which call for complicated equipment to be manufactured to meet foreign customer specifications. The committee, therefore, proposes no time limit on the contract sanctity provision of H.R. 3231, though it intends that any effort to evade export controls through the use of unusually long or contorted con-

tracts should be subject to the prohibitions in the bill against evasion of the act.

H.R. 3231 would also further encourage and facilitate agricultural exports by automatically terminating any Presidential embargo of agricultural exports for foreign policy or short supply purposes after 60 days unless Congress by joint resolution approved continuation of such an embargo within that time.

Maintenance and expansion of the U.S. share of world markets for agricultural products is both an essential factor in the growth and stability of the U.S. economy and an important element of U.S. global influence. The perception of U.S. suppliers as unreliable in world markets due to U.S. Government disruption of contracts has been no less damaging to agricultural suppliers than to other export sectors. The protection of exports provided by H.R. 3231 should contribute substantially to agricultural export expansion on an equal footing with exports of manufactured products.

### EXPORT LICENSE DECISIONMAKING: THE NEED FOR BALANCE

The committee bill maintains and reinforces the existing system of shared responsibility for export control policy and licensing among the Departments of Commerce, Defense, and State. Considerations was given to proposals to shift responsibility to a single Department, or alternatively to create a new agency specifically devoted to administering export controls. The committee rejected these approaches, concluding that the only means of assuring that both economic and national security or foreign policy considerations are fully weighed in export control decisions is to involve fully and equally the Departments charged with furthering those goals.

The act provides the Department of Defense with a virtual veto over approval of applications for licenses to export to destinations controlled for national security purposes. The committee encourages and expects the Department of Commerce, however, to consult fully and actively with Defense, the intelligence agencies, and the Department of State in cases where exports of controlled items to free world countries might involve significant risk of diversion (reexport) to a controlled destination, and to take the recommendations of those Departments and agencies seriously into account in rendering license decisions in such cases. Such active consultation, and continued Commerce responsibility for decisions on free-world license applications, is preferable to formal review by other Departments over free-world licenses. Such review would greatly complicate and slow free-world trade, the vast bulk of which involves little or no national security risk.

### PETROLEUM EXPORTS

In view of the changes that have taken place since 1979 in the world petroleum market, the committee reviewed the provisions of the act relating to exports of domestically produced crude oil and refined petroleum products.

Conditions on the export of Alaskan North Slope crude oil exports are set forth in section 7(d) of the act. The committee recognizes that permitting exports of limited amounts of North Slope crude oil may

improve the climate of United States-Japan trade relations and serve to reduce the U.S. balance-of-payments deficit with that country. However, the committee strongly believes that the costs associated with allowing unrestricted exports of crude oil continue to outweigh the limited benefits that may be gained from such trade.

Alaskan North Slope crude oil production is currently running at approximately 1.65 million barrels per day. Yet, the United States continues to import some 4.3 million barrels of crude oil each day, or about one-third of domestic demand. Moreover, the committee notes that the present strategic petroleum reserve fill rate of some 220,000 barrels per day is far short of the legislatively mandated target of 300,000 barrels per day.

The committee considers that continuing volatility in the world's supply of crude oil, instability of key U.S. oil supplier nations, and the need to conserve domestic supplies of crude oil dictate that U.S. interests are best served at this time and in the foreseeable future by retaining restrictions on crude oil exports, and by extending the date of expiration of the provisions of section 7(d) of the act to September 30, 1987. The committee reaffirms, through this action, congressional intent since 1973 that Alaskan North Slope crude oil should be produced for domestic consumption unless U.S. national security and consumer interests are clearly served by such exports, or unless the U.S. obligation to export under the terms and conditions of the sharing agreement of the Organization for Economic Cooperation and Development is triggered by renewed international shortfalls.

The committee also considered the effects of the requirement in section 7(e) of the act of a 30-day congressional review period for each application to export refined petroleum products that would result in more than 250,000 barrels going to one country in a year. The committee noted that in his October 2, 1981, decision to lift quantitative restrictions on exports of refined petroleum products, the Secretary of Commerce found that the domestic economy no longer was threatened by an excessive drain of scarce refined petroleum product supplies, that an adequate supply of petroleum products exists, and that increased production by U.S. refineries would allow U.S. consumers to benefit from exports of refined petroleum products. The committee believes that the 30-day congressional notification requirement has had the effect of perpetuating short supply controls on exports of such products during periods of abundant domestic supply. For these reasons, the committee feels that removal of the congressional notification procedure during periods when short supply controls are not in effect eliminates a time-consuming and costly process for U.S. firms engaged in petroleum product exports, strengthens the reliability and competitiveness of U.S. petroleum product export firms in the world market, and provides an incentive to small- and medium-sized firms to enter the export market. Under the committee provision, notification could be reinstated should domestic petroleum scarcity recur.

### TRADE WITH SOUTH AFRICA

The committee bill adds a new title III to the act, the U.S. Policy Toward South Africa Act of 1983. Meeting in open markup session

on May 12 to consider H.R. 2915, the fiscal year 1984–85 State Department authorization legislation, the committee by unanimous consent agreed to delete title VII of H.R. 2915, the U.S. Policy Toward South Africa Act of 1983. Subsequently, by unanimous consent, the committee agreed to an amendment to incorporate the provisions of the U.S. Policy Toward South Africa Act as title III of the Export Administration Amendments Act of 1983. The committee, meeting in open markup session on May 25, agreed by unanimous consent to certain technical amendments to title III of the bill. During the 97th Congress, the provisions of title III were the subject of five joint hearings before the Subcommittees on International Economic Policy and Trade and on Africa, which favorably reported legislation similar to the provisions contained in title III.

Title III establishes a set of legally enforceable fair employment standards for U.S. firms operating in South Africa with more than 20 employees; bans future U.S. bank loans to the South African Government, except for loans made for educational, housing, and health facilities which are available on a totally nondiscriminatory basis in areas open to all population groups; bans imports to the United States of krugerrands or any other gold coins minted or offered for sale by the South African Government; prescribes penalties for noncompliance; and directs the Secretary of State to implement these provisions. Title III would not require any withdrawal of existing investments by U.S. banks or firms operating in South Africa.

The committee's intent in adopting title III of this bill is: (1) To demonstrate to the South African Government that the United States is unalterably opposed to apartheid and will not countenance policies aimed at reinforcing the apartheid regime; and (2) to send a clear political message to the black majority in South Africa, as well as to other African and Third World nations, that the United States is both allied with their legitimate aspirations and is willing to back up its opposition to apartheid with deeds as well as words.

The committee strongly supports efforts to remove obstacles to free trade and to avoid unnecessary, new restrictions on international commerce. However, the committee believes that the provisions of title III are warranted in view of the unique system of institutionalized racism in South Africa; the increasing risk of serious and sustained regional violence, inviting Soviet involvement, which results from this system; the failure of the U.S. policy of "constructive engagement" to alter significantly South Africa's domestic or international behavior; and condemnation of that policy by leaders of both the black majority in South Africa and most other African states. In view of the important U.S. political, economic, and strategic interests in the region, the committee believes that the United States should make it clear that it supports peaceful and fundamental change in South Africa.

The committee recognizes that the United States maintains extensive economic ties with South Africa: More than 300 U.S. subsidiaries and affiliates operate in the country; our direct investment totals some $2.6 billion, making the United States the second largest foreign investor in South Africa; private and public sector bank loans amount to $3.7 billion; and South Africa yearly imports $2 billion from the United States and exports $3 billion to the United States. The committee believes that a new legislative approach to South African policy,

through modification of U.S. economic relations with that country, would be compatible with both our commitment to promoting respect for human rights and our long-term interests in the region.

Specifically, the committee expects that the mandatory fair employment code will make a meaningful difference in the lives of approximately 70,000 nonwhite men and women who work for U.S. firms in South Africa. The committee believes that the ban on new bank loans will serve to distance the United States from South Africa's official policy of apartheid, and undercut the claim of Some South African officials that international loans prove the regime's creditworthiness and international respect. Likewise, the ban on the importation into the United States of krugerrands and other South African Government-minted gold coins would distance the United States from the South African Government policy of apartheid and effectively deprive that country of significant U.S. dollar earnings, which have amounted to more than $1.2 billion since 1980. The committee does not believe that the ban on krugerrand and other gold coin imports would place the United States in violation of the General Agreement on Tariffs and Trade (GATT). Article XX of the GATT permits the adoption of measures "relating to the importation * * * of gold or silver" if they are not applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." There is no GATT case law explaining the meaning of this phrase. The committee is not convinced that these measures constitute "arbitrary or unjustifiable discrimination."

With respect to Subtitle 1: Labor Standards, Rev. Leon Sullivan, founder of the voluntary fair employment principles, has testified that approximately 150 U.S. companies with about 15 percent of the work force employed by U.S. firms in South Africa have not signed his voluntary code of fair labor standards, and that 40 percent of the Sullivan signatories have received a failing grade in implementing the code. The 1982 "Sullivan Report" on compliance of U.S. firms in South Africa, prepared by Arthur Little Co., indicated that nearly one-half of the signatories did not report or "needed to become more active." Reverend Sullivan has endorsed the adoption of a mandatory, comprehensive fair employment code.

Regarding the provisions of Subtitle 2: Prohibition on loans and Importation of Gold Coins, the United States has in the past restricted private banking and trade relations with certain countries, based on the need to promote and protect U.S. security, the domestic economy, or foreign policy interests. These restrictions have generally been broader than those set forth in title III. For example, legislation enacted in 1978 required a total embargo on trade with Uganda; the International Emergency Economic Powers Act permits the United States to maintain an embargo on all economic transactions with Cuba, Vietnam, Cambodia, and North Korea; and an embargo was in place against Iran during the hostage crisis of 1979–81. Under the U.N. Participation Act, the United States maintained comprehensive economic sanctions against the white minority government of Rhodesia for many years. The Export Administration Act authorizes restrictions on exports, on grounds of national security, short supply, and foreign policy concerns, including antiterrorism, human rights,

and nonproliferation of nuclear weapons. In 1978, the Congress demonstrated its willingness to restrict South Africa's access to U.S. credit by banning Export-Import Bank loans to the South African Government until the President certifies that substantial progress has been made in eliminating apartheid. The restrictions set forth in subtitle 2 would apply only prospectively, and would not affect retroactively any existing loans or gold contracts.

With respect to subtitles 1 and 2 generally, the committee wishes to emphasize that a number of laws provide for the extraterritorial application of U.S. law to U.S.-controlled subsidiaries abroad, such as the Toxic Substances Control Act, the Trading with the Enemy Act, and the Foreign Corrupt Practices Act. While title I proposes to limit the extraterritorial application of U.S. foreign policy controls to cases in which Congress specifically authorizes such extraterritoriality, the committee feels that South Africa is such a case. The application of congressionally mandated prohibitions on trade with Uganda and economic transactions with Rhodesia included foreign-based U.S. subsidiaries. Under the 1978 Export-Import Bank Amendments Act, South Africa currently permits not only U.S. subsidiaries but even South African domestic firms to supply information to and undergo onsite monitoring by U.S. Embassy officials regarding implementation of fair employment principles.

The committee wishes to underline that title III of the bill grants authority to the President to terminate or waive certain provisions of this title in order to meet changing circumstances. The President may waive or terminate the fair employment provisions of subtitle 1 if certain conditions are met, and may waive, for a period of up to 1 year, the provisions of subtitle 2 relating to bank loans and imports of gold coins if certain conditions are met.

It is the committee's intent that together, the three measures set forth in title III will demonstrate to both the Government and the black majority of South Africa, as well as to other African nations, that the United States is unalterably opposed to apartheid, and is willing to back up its opposition with actions as well as words.

## Section-by-Section Analysis

*Section 1—Short title*

This section cites the short title of titles I and II of the bill as the "Export Administration Amendments Act of 1983."

### TITLE I—AMENDMENTS TO EXPORT ADMINISTRATION ACT OF 1979

*Section 101—Reference to the act*

Section 101 cites the Export Administration Act of 1979 as "the act."

*Section 102—Violations*

Section 102 of the bill amends section 11 of the act.

Subsection (a) expands the definition of violations of the act to include conspiracy or attempt to export illegally, possession of goods or technology with the intent to export illegally or knowing or having reason to believe they will be exported illegally, and any action with the intent to evade the act.

The act provides only that actually exporting contrary to the act constitutes a violation. An expanded definition of violations facilitates enforcement of the act by enabling seizures of illegal exports and arrests of violators to be made before goods or technology are committed to the exporting carrier and by enabling prosecution of a wider network of parties to an illegal export transaction. By including as a violation action with the intent to evade the act, parties who might transfer their export business to overseas subsidiaries or affiliates, in order to evade U.S. foreign policy controls, would be subject to prosecution.

Subsection (b) prohibits exceptions to orders denying export privileges (the most severe civil penalty) unless Congress is consulted. Such consultation would provide an opportunity for Congress to review the justification for any such exception. The committee expects such consultation to occur well in advance of approval of any exception.

Subsection (c) provides that any forfeitures pursuant to the amendment made by subsection (*d*) of this section shall be covered into the Treasury as miscellaneous receipts.

Subsection (d) adds a new subsection (f) to section 11 of the act to provide a new type of penalty, forfeiture to the Government of illegal exports and the proceeds therefrom, in order to reduce the incentive to violate the act for monetary gain.

The act provides fines, imprisonment, and denial of further exports (both by violators in the United States and to violators located abroad) as penalties.

Subsection (e) makes a technical amendment to section 11 of the act.

*Section 103—Enforcement authority*

Section 103 of the bill amends section 12 of the act to provide law enforcement authorities (execute warrants, make arrests, search and seize illegal exports, and carry firearms while engaged in these activities) to the Commerce Department's enforcement personnel; to limit enforcement activities by the Customs Service to preseizure targeted inspections, detentions, preliminary investigations, and seizures; to require that, upon seizure, the Customs Service must forward a case to the Department of Commerce for appropriate action; and to limit the expenditures by the Customs Service for enforcement of export controls to $14 million per year.

Enforcement personnel of the Commerce Department presently must request that the Customs Service seize outbound cargoes, execute warrants, et cetera, because the Commerce Department lacks these basic law enforcement authorities. Limiting the role of the Customs Service to preseizure activities at ports affirms the role that the Customs Service, with its personnel at every port, is best able to perform. The Department of Commerce, with authority to investigate alleged violations and to impose civil penalties (fines or denial of export privileges) or to refer a case to the Department of Justice for criminal prosecution, remains the lead agency in enforcing the act. The limitation on the expenditure by the Customs Service for enforcing export controls is the same amount authorized by the House of Representatives in H.R. 2602: The Fiscal Year 1984 Customs Service Authorization. The Commerce Department is authorized $15 million per year for enforcement activities in section 123 of this bill.

*Section 104—Findings; declaration of policy*

Section 104(a) of the bill revises an existing finding in section 2 of the act on the importance of exports to the Nation's economy to reflect that exports must be consistent with economic, security, and foreign policy objectives, and adds a finding on the importance of controlling for foreign policy reasons exports of hazardous goods and substances which could affect the reputation of the United States as a responsible trading partner.

Section 104(b) adds new policy statements to section 3 of the act on sustaining vigorous scientific enterprise by protecting the ability of scientists and scholars to communicate their research findings, and on fostering public health and safety and preventing injury to U.S. foreign policy and the reputation of the United States as a responsible trading partner by controlling the export of hazardous goods and substances.

*Exports of hazardous goods and substances.*—The committee remains concerned that exports of hazardous goods and substances which could cause injury to public health and the global environment are damaging to the reputation of the United States as a responsible exporter and negatively affect U.S. relations with other countries. This concern prompted investigatory hearings on exports of hazardous products by the Subcommittee on International Economic Policy and Trade during the 96th and 97th Congresses.

Hazardous goods or substance is a product which has been banned or severely restricted for use in the United States by a Federal regulatory agency's action to disapprove or remove the product from the domestic market for most or virtually all major uses or to subject the product to extremely strict limitations on its distribution. The fact that in the United States a particular pesticide may only be applied by a certified applicator or a pharmaceutical may only be sold under a prescription would not in and of itself constitute severe restriction on the use of such goods or substance.

The committee intends at this time that export controls only be applied in those rare instances where the export of a banned or severely restricted goods or substance would cause substantial harm to U.S. foreign policy and only when alternative statutory controls or notification are insufficient to prevent harm. The committee calls upon the Secretary of State, when necessary to prevent harm to U.S. foreign policy, to recommend to the Secretary of Commerce that export controls be imposed on hazardous goods and substances. The committee also urges the Secretary of State to place a priority upon multilateral negotiations to reach international agreement on restricting exports of hazardous products.

*Scientific communication.*—During the past 2 years, various U.S. Government actions and statements have conveyed great concern regarding the acquisition of Western technology by the Soviet Union and its Warsaw Pact allies. As a result of this concern, the committee has seen more vigorous enforcement and application of existing legal authority to curtail this flow, including use of the Export Administration Act, to limit or otherwise chill normal and essential scientific communication activities, including unclassified research dissemination, publication, and exchanges in the open classroom and among scholars.

The committee is deeply concerned that an overly broad interpretation of the Export Administration Act may seriously limit, on grounds of national security, the legitimate scientific communication process on which scientific productivity in the United States depends. Clearly, the strength of U.S. technology which underlies national security will not be maintained or improved if scientific and technological progress and innovation are inhibited as a result of overreaching security limitations on dissemination of scientific information under the Export Administration Act. As a National Academy of Sciences panel on "Scientific Communication and National Security" concluded last September, the country's long-term security is best protected through the continued vitality and achievements of its economic, technical, scientific, and intellectual communities. Moreover, "science" and "national security" are not antagonistic to one another. Scientists and Government leaders demonstrate a broad appreciation of the national security concept, including not only military applications and preparations, but also economic, cultural, and other considerations.

The committee shares the concerns expressed by the Academy panel. The provision in section 104(b) of the bill has been added to make explicit the view of the committee that traditional scientific communication activities of universities and the academic community, such as basic research, publications, and exchanges in the open classroom and among scholars, should be free from restriction unless the scientific information in question is subject to security classification under the President's Executive Order 12356 or its availability in the United States is limited by government contract controls or proprietary or trade secret restrictions. The committee recognizes that there are legitimate concerns about the flow of sensitive U.S. technology through scientific communication and exchanges which may be damaging to U.S. national security and that there is an important role for U.S. Government oversight. However, the committee believes that existing government authority to declare material classified, to control work performed under contracts, and to limit the entry to and movement within the United States of foreign nationals is adequate to meet virtually all of our reasonable security needs. Any application of the provisions of the Export Administration Act to traditional scientific communication that deviates from the views stated here bears a heavy burden of justification to this committee.

*Section 105—Types of licenses*

Section 105 of the bill amends section 4 ("General Provisions") of the act to specify in subsection (a), in addition to the qualified general license in the existing act, three types of licenses authorizing multiple exports (distribution, project, and service supply) currently provided for by regulation, and to provide a new type of export license, a "comprehensive operations license," authorizing multiple shipments of goods and technology from a U.S. company to and among its subsidiaries, affiliates, vendors, joint venturers, and licensees abroad.

The committee strongly supports the use of licenses authorizing multiple exports for trade with Western countries. Continuing and repetitive exports by U.S. firms to Western destinations do not require a transaction-by-transaction review. Applications for the same type

products, to the same destinations and to the same end-users are needlessly expensive and time-consuming for both government and industry, place U.S. exporters at a competitive disadvantage by creating uncertainty with respect to likely shipment dates, and most importantly, divert attention from applications for exports to countries to which exports are controlled for national security purposes. The distribution, project, and service supply licenses have served well to reduce the burdens on government and business of individual licenses for each transaction, with no adverse impact on national security, and the committee insures the continued availability of these licenses by specific statutory language. The new "comprehensive operations license" would eliminate the need for U.S. companies with a history of compliance with export control regulations and strong internal management controls on technology flows to apply for separate licenses for day-to-day transactions within their network of subsidiaries, affiliates, vendors, joint venturers, and licensees overseas. At the discretion of the Secretary, these affiliates could also include suppliers, subcontractors, and research or development facilities when the Secretary concludes that the relationships among the entities are of sufficient duration and contractual constraints to enable adequate control over the goods or technology. The act presently provides only for general, qualified general, and validated license types. The Secretary of Commerce (hereafter referred to the "the Secretary") retains authority to approve or deny applications for all types of licenses on a case-by-case basis, and to develop other appropriate bulk licensing procedures.

*Section 106—National security controls*

Section 106 of the bill amends section 5 of the act, which authorizes controls for reasons of national security.

Subsection (a) amends section 5(a) to authorize controls on sales within the United States to embassies and affiliates of controlled countries.

The act does not preclude such controls, but the executive branch, concerned about alleged illegal exports via diplomatic pouches and shipments, requested explicit authority to impose such controls.

Subsection (b) amends section 5(b) to restrict the use of the national security control authority to require licenses for exports to CoCom countries (U.S. allies) of goods and technology also controlled by those countries.

Licensing of exports to our allies, who participate with the United States in a system (CoCom) of security controls on exports to the Soviet bloc, constitutes one-third of the 75,000 export license applications processed each year. Such applications are routinely approved, after a waiting period for the exporter of weeks or months. The committee notes that no export licenses are presently required for exports to Canada, and that this exemption has facilitated United States-Canada trade without harm to U.S. national security. The committee therefore seeks to expand the exemption from licensing requirements to all CoCom member countries. Since the United States has the opportunity at CoCom to veto any proposed export of CoCom-controlled goods or technology from a CoCom-member country, licensing of exports to our allies at the time the goods or technology leave the United

States is a duplicative paper exercise. The provisions authorizes the Secretary to require notification to the Department of Commerce that an export to a CoCom country has taken place. False statements made on such notification with respect to final destination and use of the commodity would constitute the kind of "paper trail" needed by the Justice Department to prosecute violators. The Secretary may also list in the regulations, and require licenses for, specific end-users who are suspected of diverting goods or technology to controlled countries.

Subsection (c) amends section 5(e) to provide that licenses authorizing multiple exports shall be available for exports to non-Communist countries (but does not require that applications for such licenses must be approved), and requires the Secretary to monitor use of licenses authorizing multiple exports to assure compliance with the act.

Subsection (d) adds to the indexing provisions of subsection 5(g) a new criterion for removal of controls under that provision. The Secretary is instructed to consider the anticipated needs of the military of controlled countries.

Subsection (e) amends section 5(k) to clarify that the Secretary of State shall negotiate with countries other than those participating in CoCom, as well as with CoCom members, concerning other countries' cooperation in export controls.

Subsection (f) adds a new section 5(m) that provides that if a commodity which is subject to unilateral export controls has been approved for export to a country group in every case during a 1-year period, export controls must be removed for exports of that commodity to that country group. The Secretary may list in the regulations, and require licenses for, specific end-users who are suspected of diverting goods or technology to controlled countries. Subsection (f) also adds a new section 5(n) to provide that goods containing embedded microprocessors may be controlled because the function of the good would make a significant contribution to the military capability of a potential adversary, but not solely because the good contains such a microprocessor, if the microprocessor cannot be used or altered to perform other functions.

The act presently provides that the Secretary shall annually review the list of goods subject to unilateral export controls for the purpose of removing controls from any goods which are no longer of national security concern, but this general annual review provision has not been sufficient to eliminate unnecessary controls. Unilateral licensing requirements impose an unfair burden on U.S. exporters, whose foreign competitors are able to ship their goods immediately, without waiting for export licenses.

*Section 107—Coordinating Committee*

Section 107 of the bill amends section 5(i) of the act to add new objectives, at the request of the executive branch, for negotiations at CoCom: improving the International Control List, minimizing approval of exceptions to that list, strengthening enforcement, increasing funding, and improving the Secretariat.

*Section 108—Foreign availability*

Section 108 of the bill further amends section 5 of the act to improve procedures for recognizing and responding to availability abroad of goods subject to export controls imposed by the United States.

Subsection (a) provides that whenever controls are being maintained notwithstanding foreign availability, the President shall

attempt during 6 months of negotiations to eliminate that availability. If the negotiations fail, the requirement of a validated license is to be removed.

Subsection (b) provides that when evidence of foreign availability is presented by exporters, the Secretary is required to accept such information unless the Secretary possesses or receives contradictory information.

Subsection (c) requires that the Secretary of Commerce establish an Office of Foreign Availability to gather and analyze all information necessary for the Secretary to make determinations of foreign availability, and requires that the office report to Congress on its activities every 6 months.

Subsection (d) requires that the Secretary issue regulations on foreign availability determinations within 6 months of the date of enactment of the bill.

Subsection (e) provides that when foreign availability is certified by Technical Advisory Committees (TAC's) (such committees are provided for in the existing act) to the Secretary and the Congress, the Secretary has 90 days to investigate and then must report to the TAC and the Congress: (a) That the validated license requirement has been removed; (b) negotiations are being conducted to eliminate the foreign availability; or (c) the Secretary's investigation has shown that foreign availability does not exist. In any case in which negotiations are pursued but are not successful after 6 months, the validated license requirement must be removed.

The existing act places no limitations on the time spent in negotiations to eliminate foreign availability. The present law provides that TAC's may advise the Secretary on foreign availability, but no certification from a TAC has ever resulted in removing an export control from a commodity. The requirement that the TAC and the Secretary report to the Congress enhances the ability of the Congress to conduct oversight effectively.

The committee recognizes that maintaining controls on U.S. goods or technology when similar goods or technology are available from foreign suppliers neither denies the goods or technology to a controlled country nor furthers U.S. national security. Maintaining controls in such circumstances does, however, have a negative impact on U.S. economic security, by harming U.S. competitiveness, ceding export markets to foreign competitors, reducing employment in the United States, denying profits to U.S. firms for future research and development, and hindering future technological advances which would strengthen U.S. national security. The committee expects the amendments made by section 108 to speed recognition of foreign availability, to provide a reasonable period for negotiations to arrange controls which would eliminate that availability in the interest of mutual security, and if negotiations are not successful, to result in prompt removal of controls.

*Section 109—Militarily critical technologies*

Section 109 of the bill amends section 5(d) of the act to require the Secretary of Commerce and the Secretary of Defense to complete the integration of Commerce's commodity control list (CCL)—the list of goods for which export licenses are required—and items on Defense's militarily critical technologies list (MCTL), and report to the

Congress on that integration, by April 1, 1985. Section 109 also provides criteria, including foreign availability, for excluding products from control, and requires that the General Accounting Office (GAO) evaluate the integration process and report to the Congress on its evaluation.

The MCTL was mandated by the Congress in the act in 1979 in order to focus U.S. controls on the technologies underlying products rather than on the products themselves. The MCTL has been developed, but has not been integrated into the CCL.

*Section 110—Criteria for foreign policy controls; consultation with other countries; report to Congress*

Section 110 of the bill amends section 6 of the act to revise the criteria in the existing act which the President must consider before imposing foreign policy controls, and strengthens the criterion on foreign availability. Section 110 also adds a new subsection (d) in section 6 to urge the President to consult with other countries before imposing foreign policy controls, to strengthen the existing requirements for consultation with the Congress before imposing foreign policy controls, to expand the contents required in the President's report to Congress on the imposition of controls, and to require that such report be received by the Congress before the controls take effect.

The commitee has assessed the imposition of controls for foreign policy purposes since 1979 by two Presidents. Setting aside disagreements on whether or not the authority to impose controls should have been used in particular ways and foreign policy circumstances, the committee finds that the executive branch process for deciding to employ controls has been deficient. The executive branch has generally failed to consult with other countries before imposing controls, which has reduced possibilities for bilateral or multilateral cooperation, and has increased allied irritation. The Congress has generally not been consulted prior to the imposition of control, but merely has been notified after the controls were imposed. The reports to the Congress required of the President have been received so long after the imposition of controls that the committee concludes that consideration of the criteria in the act for imposing controls occurs only after the controls are imposed, and only in the context of justifying the controls to the Congress. The committee expects the requirement in the bill for consultations and reports before imposing controls will assure use of the authority in section 6 in accordance with the intent of Congress.

The committee intends by including a specific criterion on foreign availability to assure greater consideration of the effectiveness of the proposed controls. The committee in 1979 recognized that foreign policy controls might be appropriate notwithstanding foreign availability of the commodities proposed to be controlled. The committee again acknowledges that use of the control authority may be appropriate in distancing the United States from policies of other countries with which it disagrees, particularly in the areas of support for international terrorism and commission of gross violations of internationally recognized human rights. However, the committee feels that the combination of failure to consult with other countries prior to imposing controls, in an effort to persuade other countries to accede to the controls, if not join in them, and the absence of any serious consideration of the extent to which commodities proposed to be con-

trolled are widely available, has been detrimental to the balance between foreign policy and economic interests which the committee seeks to achieve in this bill.

*Section 111—Effect of controls on existing contracts and licenses*

Section 111(a) of the bill further amends section 6 of the act by adding a new subsection (m) to provide that new foreign policy controls may not interfere with contracts to export entered into, or export licenses approved, before the date the controls were imposed, unless the controls relate directly to actual or imminent acts of aggression, international terrorism, human rights violations, or nuclear weapons tests, or unless Congress by law authorizes interruption of existing contracts. Imposition of controls under this provision is intended to include any expansion of existing controls to additional products or to additional country or project destinations, and any decision to suspend processing of export license applications.

A contract to export includes any agreement to sell or lease goods intended to be exported or to provide services at a location outside the United States and any agreement which gives one party a firm option to buy or lease such goods or to buy such services. Such a contract is entered into when a written proposal which contemplates such contract is accepted or, if there is no written proposal, when a contract is signed.

Export controls shall not prohibit the delivery or export, at any time after their imposition, of any goods or services to be provided under a contract entered into prior to the imposition of such controls. Further, export controls shall not prohibit the seller's delivery or the export, at any time after imposition of such controls, of any items or services for such goods, if such items or services are customarily provided by such seller in connection with the sale of such goods.

An export license required for the delivery or export of any goods or services shall not be suspended or revoked, nor issuance or renewal denied, as a result of export controls imposed after the contract for such goods and services was entered into. An export license issued prior to the imposition of controls includes a general license available to U.S. exporters prior to an imposition of controls which necessitates application for a validated license if a contract to export had not ben entered into prior to the imposition of controls.

Section 111(b) of the bill adds a new subsection (k) to section 7 of the act to provide that any export controls imposed under the short supply controls authority shall not affect any contract to export entered into before the date on which such controls were or are imposed, including any contract to harvest western redcedar on State lands. This provision applies to export controls in effect on the date of enactment of the bill, and to export controls imposed after such date.

The new subsection (k) strengthens the reputation of the United States as a reliable supplier by assuring that goods under contract prior to the imposition of short supply controls will continue to be exported pursuant to that contract and the appropriate license. This provision is consistent with the action in granting contract sanctity for goods upon which foreign policy controls, under the authority contained in section 6 of the act, may be imposed.

With respect to agricultural commodities, section 111(b) reaffirms congressional intent expressed in the Futures Trading Act of 1982,

which guarantees the sanctity of agricultural export contracts entered into prior to the imposition of export restrictions, where delivery is to take place within 270 days after the date the restrictions are imposed. This provision provides that export contracts will be respected, and does not prohibit the President from denying or limiting future sales of agricultural commodities.

Section 111(b) provides that export controls imposed under the authority contained in section 7(i) of the act shall not affect any contract, or extension thereof, to harvest unprocessed western redcedar from State lands entered into before the date on which such controls were imposed (Oct. 1, 1979). This provision shall not affect the prohibition contained in section 7(i) of the act (which took effect Sept. 30, 1982) on exports of all unprocessed western redcedar logs harvested from Federal and State lands for which contracts were entered into on or after October 1, 1979. New subsection (k) permits the export of unprocessed western redcedar logs under harvesting contract on State lands before October 1, 1979, less any amount that has been exported under the phase-out mandated in section 7(i)(1) (A) through (C) of the act, and less any amount exported under section 101(o) of Public Law 96–536 and any other provisions of law. The committee does not intend this section to affect controls mandated by other statutes on exports of unprocesed western redcedar logs harvested from Federal lands.

The committee is concerned about both the burden imposed upon exporters of unprocessed redcedar logs by the Secretary's validated licensing requirement for exports of all redcedar harvested from private lands, and the need for the Secretary to insure compliance with section 7(i) of the act. The committee intends that the Secretary shall continue to monitor all exports from the United States of unprocessed western redcedar logs harvested from Federal, State, and private lands, and shall continue to require detailed reporting of and a validated license under the authority contained in section 7(a) of the act for all exports of unprocessed redcedar harvested from Federal and State lands, as defined in section 7(i)(4) of the act. The committee reaffirms its concern that third-party arrangements, substitution, and similar practices involving the sale, harvesting, transfer, and use of redcedar are not used to evade the purposes of section 7(i) of the act. However, the committee believes that the requirements of section 7(i) and of new subsection (k) may be met through alternatives to the present validated license requirement for each export shipment of unprocessed redcedar logs under a pre-October 1, 1979, harvesting contract on State lands and for exports of unprocessed redcedar logs harvested from private lands.

It is therefore the committee's intent that the Secretary explore alternatives to a validated license for exports of redcedar logs harvested from private lands and under a pre-October 1, 1979, harvesting contract on State lands. In exploring alternatives the Secretary should consult with all parties affected by subsection (i) and new subsection (k) of section 7, including the U.S. Forest Service, the State of Washington, and firms engaged in the harvesting, processing and/or export or possible export of unprocessed redcedar logs. Alternatives should all include, but not be limited to the marking by paint or branding

systems used by the U.S. Forest Service or the State of Washington to assure that logs harvested from Federal and State lands and required by this section to be processed domestically are not exported, and the granting of a single, validated license to an exporter for multiple shipments of unprocessed redcedar logs under a pre-October 1, 1979, harvesting contract. If the Secretary determines that the terms of this section can be implemented through means other than a validated license, the committee expects the Secretary to issue new regulations for the purpose of implementing the terms of this section.

Section 111(c) provides that the amendment to the foreign policy controls section applies to new foreign policy controls, and that the amendment to the short supply controls section applies to new and existing short supply controls.

*Section 112—Exemption from foreign policy controls*

Section 112 of the bill amends section 6(g) of the act to add donations of goods for humanitarian purposes to the existing exemption from foreign policy controls for medicine and medical supplies in subsection (g). Section 112 also amends section 6(g) to provide that none of these exemptions would apply to controls imposed on hazardous goods or substances.

The committee intends to protect from foreign policy export controls material which is donated through U.S. private and voluntary charitable organizations (PVO's) in support of their efforts to help meet basic human needs overseas. Such donations include food and clothing, and may also include goods such as medicines, medical supplies and equipment, shelter and basic cooking and other subsistence materials, basic agricultural materials, and educational supplies. A number of PVO's have indicated to the committee that over the years, and at present, they have experienced difficulty in obtaining from the Department of Commerce the requisite licenses to ship such items as donated wheat, school kits (including pencils and notebooks), seed processing equipment, materials for a beekeeping project, and medicine and vitamins.

The new provision applies to current export restrictions as well as to any export controls imposed in the future. It is consistent with initiatives of this committee in recent years in the Foreign Assistance Act to encourage humanitarian work by U.S. private citizens and organizations in international relief, refugee, and development activities, and to protect their voluntary nature from intrusions by the U.S. Government.

The committee believes there is a compelling national interest in protecting the abilities of PVO's to respond to human need wherever it exists. The committee expects this national interest and the new language in section 6(g) of the act to be implemented in regulations issued by the Department of Commerce which would eliminate the need for PVO's to experience the delays of the export licensing process.

*Section 113—Foreign policy controls authority*

Section 113 of the bill amends section 6 of the act.

Subsection (a) amends section 6(a) to set forth the scope of the authority of the President under section 6(a) to impose foreign policy

controls. Controls imposed after the date of enactment of the bill could not have extraterritorial application without specific authorization of the Congress by law.

Subsection (b) further amends section 6(a) to provide that foreign policy controls apply to any transaction or activity undertaken with the intent to evade the controls.

Subsection (c) adds a new subsection (n) to provide procedures for expedited consideration, by the appropriate committees of Congress, of a joint resolution giving the President authority to impose foreign policy controls extraterritorially, retroactively (to preexisting contracts), or without regard to any other limitation of authority contained in section 6.

Subsection (d) provides that the amendments made in this section do not apply to controls in effect on the date of enactment.

The amendments made by section 113 preclude imposition in the future of the kind of extraterritorial foreign policy controls imposed by the President on U.S. subsidiaries and licensees abroad to slow construction of the Yamal pipeline, unless extraterritorial and/or retroactive controls are specifically authorized by the Congress by law. Foreign policy controls presently in effect (for example, on South Africa, Libya, and other terrorist countries, and for human rights purposes) are not limited by these amendments.

*Section 114—Crime control instruments*

Section 114 of the bill amends section 6(k) of the act (as redesignated by the bill) to provide that the Secretary's decisions on imposing controls on, and approving or denying export license applications for, crime control and detection equipment (to further U.S. policy on human rights) must be made with the concurrence of the Secretary of State. Should the Secretaries disagree, the matter shall be referred to the President.

*Section 115—Reimposition of certain controls*

Section 115 of the bill amends section 6 of the act by adding a new subsection (o) to reimpose certain foreign policy controls on Iraq and South Africa which were lifted by the President in 1982 and 1983 and by amending section 6(j) (as redesignated by the bill), the existing provision regarding exports to terrorist countries, to provide that a country may not be removed from the list of terrorist countries unless the President certifies that such country has not provided support for terrorist activities during the preceding 12-month period. The effect of the amendments is to restore Iraq to the State Department's list of terrorist countries, to reinstate foreign policy controls on exports of civil aircraft to regularly scheduled airlines in terrorist countries, and to restore controls on all exports to South African police and military entities, and on certain computers destined for the South African Government. The requirement in the act that the executive branch notify the Congress before approving a license for export of more than 7 million dollars' worth of goods which could enhance the capabilities of a terrorist country to support terrorist activities would apply to sales to Iraq, Syria, South Yemen, Libya, and Cuba of civil aircraft and other commodities controlled for export to terrorist countries.

*Section 116—Petitions for short supply controls*

Section 116 of the bill amends section 7(c) of the act, relating to petitions for monitoring or controls. This section: (1) Adds a requirement of "substantial cause of adverse effect" to the factors the Secretary must consider in determining whether to impose monitoring or controls, or both, on exports of metallic materials capable of being recycled (ferrous and nonferrous scrap); (2) defines "substantial cause" as a cause which is important and not less than any other cause; (3) requires the Secretary, through formal comment and rulemaking, to issue regulations before March 1, 1984, defining certain operative terms contained in section 7(c) of the act; (4) requires the Secretary to make and to publish certain findings, including finding of fact, in determining whether to impose monitoring and/or controls on exports of such goods; and (5) makes certain technical and conforming changes in section 7(c) of the act.

The amendments made by section 116 strengthen and clarify the criteria used in and the process of the Secretary's determination of whether to impose monitoring or controls, or both, on exports of recyclable metallic materials under the authority contained in section 7(c). The amendments eliminate ambiguities in key operative terms, and improve upon the process contained in current law by requiring the Secretary to meet the same criteria for self-initiated determinations as private petitioners must presently meet.

The effect of the amendments is to require the Secretary to determine that exports are or may be a substantial cause of a significant price increase or a domestic shortage, and that exports are or may be a substantial cause of adverse effect on the national economy *or* any sector of the national economy *or* a domestic industry. The test is in the disjuctive; a showing of adverse effect on the national economy, without showing adverse impact to a particular industry, would satisfy the standard. The committee notes that the amendments have a prospective element.

The amendments further provide that if a petition under section 7(c) has been considered in accordance with all the procedures prescribed in the subsection, the Secretary shall not consider any other petition concerning the same material or group of materials that is filed within 6 months after a final determination on the prior petition has been made However, it is the committee's intent that the Secretary retain the authority to impose monitoring or controls, or both, at any time, in the absence of a formal or informal request, if the provisions of subsection (c)(3) (A) and (B) have been met first. The committee expects that if hearings are requested, the hearings would be complete, on-the-record proceedings, including the opportunity for cross-examination of witnesses, in order to enable the Secretary to make the findings required by section 7(c)(3)(B). The amendments made by section 116 clarify that the procedural and substantive standards of section 7(c) must be satisfied before monitoring or controls are initiated in response to an informal or formal request from any entity described in paragraph (1)(A) of that section.

*Section 117—Domestically produced crude oil*

Section 117 of the bill extends the provisions of section 7(d) of the act, relating to restrictions on exports of domestically produced

crude oil, 2 years beyond the date of expiration of the act which is contained in the bill, to September 30, 1987. This provision reaffirms the intent of the Congress since 1973 that, unless the President reports to the Congress that certain consumer benefits and the national interest would be clearly served by exports of Alaskan North Slope crude oil, and unless the Congress within 60 days approves the proposed exports, no such crude oil may be exported from the United States. The extension of section 7(d) made by section 117 encourages improvements in the domestic refinery capacity to utilize North Slope crude oil. The committee notes that in 1982, the United States imported about 4.1 million barrels of crude oil each day, or about one-third of domestic demand, and that Alaskan North Slope crude oil production is presently running at about 1.65 million barrels per day. The committee recognizes that U.S. national security interests, the promotion of domestic energy conservation, and the need for a stable supply of crude oil are served by extending the provisions in present law on the export of Alaskan North Slope crude oil to September 30, 1987.

*Section 118—Refined petroleum products*

Section 118 of the bill amends section 7(e) of the act to eliminate the requirement of a 30-day congressional review period of each application to export refined petroleum products during periods when short supply controls on such products are not in effect. The requirement of notification to Congress in the existing act has had the effect of perpetuating short supply controls on refined petroleum products during periods of abundant domestic supply. During periods when short supply controls are not necessary, this provision removes a time-consuming and costly notification process for U.S. firms engaged in petroleum product exports; strengthens the reliability of supply by and competitiveness of U.S. petroleum product export firms in the world market; provides an incentive to small- and medium-sized petroleum product firms to enter the export market; and is consistent with the October 2, 1981, decision by the Secretary to lift quantitative restrictions on the export of refined petroleum products.

The amendment made by section 118 directs the President to notify the Congress and to resume the 30-day congressional review procedure required in section 7(e)(1) of the act if the President determines that it is necessary to reimpose short supply controls on the export of refined petroleum products in order to carry out the policy contained in section 3(2)(c) of the act. The Secretary shall also notify the Congress if and when he determines that such export controls are no longer necessary.

*Section 119—Agricultural exports*

Section 119 of the bill amends section 7(g)(3) of the act: (1) To extend the period from 30 days to 60 days for congressional action on a report by the President imposing, under section 7 (short supply controls) or section 6 (foreign policy controls) of the act, a prohibition or curtailment on the export of any agricultural commodity; and (2) to provide that such a prohibition or curtailment on the export of any agricultural commodity shall cease to be effective at the end of that 60-day period unless the Congress adopts a joint resolution

approving such a prohibition or curtailment on the export of any agricultural commodity.

The amendment provides the Congress an additional 30 days in which to respond to a Presidential decision to prohibit or to curtail the export of any agricultural commodity for reasons of short supply or foreign policy. This extension permits the Congress to give more thorough consideration to an agricultural export embargo. By requiring the Congress to act affirmatively in order for the President's decision to remain in force, section 119 permits a Presidential decision to impose a grain embargo to be reinforced through positive congressional action. The committee recognizes the importance of agricultural exports to the U.S. economy and the need to enhance the reputation of the United States as a dependable supplier of agricultural commodities. The committee notes that in 1982 the United States exported agricultural commodities valued at nearly $40 billion; in the same year, the U.S. agricultural trade surplus reached nearly $24 billion. One in three acres of U.S. farmland produces for export, with two-thirds of domestic wheat and more than one-half of domestic cotton, soybeans, and rice sold into the export market.

*Section 120—Licensing procedures*

Section 120 of the bill amends section 10 of the act to improve the procedures for processing export license applications.

Subsection (a) amends section 10(c) to shorten the time from 90 days to 60 days for Commerce Department processing of applications which do not require interagency review.

Subsection (b) amends section 10(f) to clarify that the Secretary's notice to an export license applicant of questions or concerns raised by other agencies is to be made in writing, to provide 30 days to the applicant to respond in writing to those questions or concerns, and, if the applicant so requests within 15 days of receipt of the Secretary's notice, to afford the applicant an opportunity during the 30-day period to meet with officials who have raised such questions or concerns.

Subsection (c) further amends section 10(f) to provide an exporter 30 days to reply to a notification of proposed denial before an application is formally denied.

Subsection (d) adds a new subsection (k) to provide that an application may not be returned to an exporter without action if the requirements for such application are changed after the application is submitted, but the Secretary may require additional information from the applicant.

Subsection (e) adds a new subsection (l) to require that the Secretary of Commerce must respond within 10 days to an exporter's written request for advice on proper classification of a good or technology, and within 30 days to an exporter's written request for other advice on the applicability of the act to a proposed export transaction.

*Section 121—Annual report*

Section 121 of the bill amends section 14 of the act to require that the annual report by the Secretary on the administration of the act describe actions taken pursuant to section 5(m) of the act, as amended by section 106(f) of the bill, to remove unilateral export controls from commodities which have been consistently approved for export.

*Section 122—Technical amendments*

Section 122 of the bill makes two technical amendments to the act, and one technical amendment to the Arms Export Control Act.

*Section 123—Authorization of appropriations*

Section 123 of the bill amends section 18 of the act to establish a requirement for annual authorization of appropriations to carry out the act, and authorizes appropriations of $24,600,000 for each of the fiscal years 1984 and 1985 to carry out the act, of which $15 million shall be available only for enforcement, $2,100,000 shall be available only for foreign availability assessments, and $7,500,000 shall be available for other activities (principally export licensing).

These authorizations exceed the executive branch's request for export administration for fiscal year 1984 by a total of $12,990,000—$10,027,000 over the executive branch request of $4,973,000 for enforcement, and $863,000 over the executive branch request of $6,637,000 for licensing (the executive branch did not make a request for foreign availability). However, the limitation contained in the amendment made by section 103 on the amount that may be expended by the Customs Service for enforcement reflects a decrease in the executive branch request of some $21 million, so the total authorization for export control functions is $8,010,000 under the executive branch request.

*Section 124—Termination of authority*

Section 124 of the bill amends section 20 of the act to extend the act for 2 years, until September 30, 1985.

*Section 125—Hours of Office of Export Administration*

Section 125 of the bill requires expanded hours for the Office of Export Administration, in order to accommodate exporters throughout the continental United States.

TITLE II—EXPORT PROMOTION PROGRAMS

*Section 201—Requirement of prior authorization*

Section 201 of the bill creates a requirement for annual authorization of appropriations for the Department of Commerce's export promotion programs.

The committee notes that the Commerce Department's export promotion programs are presently funded under the standing authorization for the Department. The committee wishes to expand the opportunity to oversee and review these programs through specific annual authorization.

*Section 202—Authorization of appropriations*

Section 202 of the bill authorizes $100,458,000 (the executive branch request for fiscal year 1984) for the fiscal years 1984 and 1985 to carry out the Department of Commerce's export promotion programs.

*Section 203—Barter arrangements*

Section 203 of the bill requires the President to submit a contingency plan to the Congress within 6 months after the date of enactment of the bill on bartering surplus agricultural commodities for petroleum and other materials vital to the national interest which are produced

abroad. It also authorizes the President to conduct such barters in situations where sales would not otherwise occur and to purchase petroleum and other materials vital to the national interest from persons in the United States who have acquired such materials by bartering agricultural commodities through normal commercial channels. The President is directed to take steps to safeguard existing export markets for U.S. agricultural commodities from being displaced by barters and purchases authorized under this section.

## TITLE III—U.S. POLICY TOWARD SOUTH AFRICA

Title III of the bill, the United States Policy Toward South Africa Act of 1983, consists of three parts: Labor standards (subtitle 1); prohibition on loans and the importation of gold coins (subtitle 2); and general provisions (subtitle 3). Subtitle 1 establishes a set of legally enforceable fair employment standards for U.S. firms operating in South Africa with more than 20 employees; prescribes penalties for noncompliance; and authorizes the Secretary of State to implement the provisions of the subtitle. Subtitle 2 prohibits U.S. bank loans to the South African Government, except for loans made for educational, housing, and health facilities which are available on a totally nondiscriminatory basis in areas open to all population groups; prohibits the importation into the United States of krugerrands or any other gold coin minted or offered for sale by the South African Government; prescribes penalties for noncompliance; and authorizes the Secretary of State to implement these provisions. Subtitle 3 sets forth general provisions relating to title III.

### *Subtitle 1—Labor Standards*

*Section 301—Short title*

The section cites title III as the "United States Policy Toward South Africa Act of 1983."

*Section 311—Endorsement and implementation of fair employment principles*

Section 311 of the bill requires any U.S. person, as defined in section 332(1) of this title, with a branch or office, or controlling a corporation, partnership, or other enterprise in South Africa in which more than 20 persons are employed, to implement the fair employment principles set forth in section 312(a) of this title. These principles are substantially similar to the fair employment principles proferred by Rev. Leon Sullivan (Sullivan Code) which companies operating in South Africa are urged to implement.

*Section 312—Statement of principles*

Subsection (a) of section 312 sets forth the following seven fair employment principles: (1) Desegregating the races in employment facilities; (2) equal employment for all employees; (3) equal pay for all employees doing equal or comparable work; (4) a minimum wage and salary structure based on a cost-of-living index which takes into account the needs of employees and their families; (5) increasing the representation of blacks and other nonwhites in managerial, supervisory, administrative, clerical, and technical jobs; (6) taking reasonable steps to improve the quality of employees' lives outside the

workplace, regarding housing, schooling, transportation, recreation, and health; and (7) recognizing labor unions and implement fair labor practices.

Subsection (b) of section 312 provides that the Secretary of State may issue guidelines, criteria, and advisory opinions relating to requirements for compliance with the provisions of section 312(a).

The committee notes that the principles set forth in section 312(a) are substantially similar to the Sullivan Code principles. However, principle 4 of section 312(a) does not require that minimum pay be "well above" the "appropriate minimum economic living level," thereby providing the executive branch with flexibility to determine minimum pay reflective of the cost of living for families. Furthermore, principle 5 requires that companies establish "timetables" for increasing nonwhite representation in white collar jobs in order to encourage effective, long-range planning for racial advances. Principle 6 adds the qualifier "reasonable" to the required steps to improve the quality of employees' living outside the workplace to insure that special company circumstances, including financial constraints, be considered in assessing performance. Finally, principle 7 details the steps that employers must take to guarantee trade unionists freedom of association and protection against victimization.

The committee emphasizes that with the exception of principle 6, the principles do not require a different or higher standard of behavior for U.S. employers in South Africa than required for U.S. employers in the United States. The first four principles, racial desegregation in employment facilities, equal employment, equal pay for equal or comparable work, and increased representation of nonwhites in white collar positions, are mandated by title VII of the Civil Rights Act of 1964, Executive Order 11264 for Federal contractors, and associated Federal Regulations. The requirement for minimum pay related to the cost of living is consistent with existing Federal minimum wage statutes. The requirements for recognizing labor unions and implementing fair labor practices are based upon those found in U.S. law and labor practices, particularly upon the National Labor Relations Act.

U.S. fair employment laws generally go even further than the fair labor code to be applied under subtitle 1 to U.S. firms in South Africa. For example, Federal contractors subject to Executive Order 11264 must establish numerical goals for minority employment based on statistical information concerning underutilization of available minorities in both their work force and immediate (or even large geographical) labor recruitment areas.

The principles contained in section 312(a) are also designed to take into account the different labor situation in South Africa and the principle of comity with the laws of another country. For example, the provisions allowing employees to solicit fellow employees to join labor organizations during nonworking hours and allowing reasonable access for labor organization representatives to communicate with employees on employer premises at reasonable times are particularly important in a country like South Africa where access to black townships may be denied to union organizers, thus making recruitment at the workers' homes particularly difficult. In addition, none of the prin-

ciples would require that a covered U.S. employer break South African law.

*Section 313—Advisory councils*

Section 313 of the bill directs the Secretary of State to appoint two advisory councils to advise the Secretary with respect to the provisions of subtitle 1: A 10-member South African Advisory Council and an 11-member American Advisory Council. The South African Advisory Council will enable local expertise and concern for equal rights to be taken into account in the specific elaboration of fair employment criteria, and permit persons in South Africa to supplement information provided by companies to the Department of State. The U.S.-based American Advisory Council will enlist the aid of persons in the United States with expertise and concern for fair employment practices in formulating policy recommendations and reviewing progress in implementing the principles contained in section 312(a). The committee notes that similar advisory boards now exist in the voluntary Sullivan Principles program; however, membership is limited to businessmen.

*Section 314—Enforcement and sanctions*

Section 314 of the bill provides authority for enforcement of and penalties for noncompliance with the provisions of subtitle 1 of the bill. Subsection (a) requires U.S. persons subject to the provisions of subtitle 1 to submit detailed and documented annual reports to the Secretary of State on compliance with the fair employment principles and to provide such other information as the Secretary may determine necessary.

Subsection (b) directs the Secretary to monitor compliance, including: (1) Onsite monitoring in South Africa with respect to each U.S. firm or U.S.-controlled subsidiary to subtitle 1, at least once every 2 years; (2) making reasonable efforts within a reasonable period of time to secure compliance by means of conciliation, mediation, and persuasion; and (3) referring to the Attorney General for criminal proceedings any case where there is reason to believe that any person has supplied false information to the Secretary relating to the provisions of subtitle 1.

Subsection (c) of section 314 directs the Secretary to make determinations on compliance by U.S. persons within 90 days after giving notice and an opportunity for a hearing to such persons.

Subsection (d) sets forth the penalties for U.S. persons determined not to be in compliance with the provisions of subtitle 1, or whose compliance cannot be established on account of a failure to provide information, or the provision of false information to the Secretary. In establishing penalties for failure to provide information, the committee's purpose is to prevent the South African Government from effectively negating the provisions of title III of this bill by refusing to allow U.S.-controlled firms to provide information to the U.S. Government.

Subsection (e) directs the Secretary to issue an order carrying out any penalty imposed under subsection (d) (1) and (2). Subsection (f) directs the Secretary to review and redetermine the compliance of U.S. persons at least once every 2 years. and, upon request, to review persons who are determined not to be in compliance or whose compli-

ance could not be established, within 60 days after the person files the first compliance report following a negative determination.

Subsection (g) provides for judicial review of the Secretary's determinations on compliance. Subsection (h) directs the Secretary to submit to Congress an annual report on compliance by U.S. persons with the fair employment principles set forth in section 312(a) of this title.

*Section 315—Regulations*

Section 315 of the bill directs the Secretary of State to issue regulations for the purpose of implementing the provisions of subtitle 1. The Secretary shall issue regulations, after consulting with the two Advisory Councils, not later than 180 days after the enactment of the bill, and after a 30-day comment period. The regulations shall set forth dates, not later than 1 year after enactment, by which persons must comply with the provisions of subtitle 1.

*Section 316—Waiver or termination of provisions*

Subsection (a) of section 316 allows the President to waive the provisions of subtitle 1 with respect to a U.S. person if he determines that compliance would harm U.S. national security. This provision requires that a waiver be published in the Federal Register and that justification for the waiver be submitted to Congress. A waiver shall take effect 30 legislative days after being submitted to Congress unless both Houses of Congress adopt a concurrent resolution disapproving the waiver.

Subsection (b) of section 316 provides that the provisions of subtitle 1 and the implementing regulations shall cease to be effective if the President makes a written determination that the Government of South Africa has terminated its practice of systematic racial discrimination and allows all racial and ethnic groups to participate fully in the social, political, and economic life of South Africa.

It is the committee's intent that the authority contained in section 316(a) be used only in the event of a specific, serious, and material threat to U.S. national security, such as the need to import from a U.S. subsidiary not in compliance with section 312(a) a certain strategic mineral which is unavailable from other sources. The committee notes that the provision for congressional disapproval of the waiver is intended to insure against any possible abuse of the waiver clause.

*Subtitle 2—Prohibition on loans and Importation of Gold Coins*

*Section 321—Loans to South Africa*

Subsection (a) of section 321 prohibits U.S. banks from making loans to the South African Government or entities owned or controlled by the South African Government, as determined under regulations to be issued by the Secretary of State under section 323. This section provides an exemption for loans to educational, housing, and health facilities available to all population groups on a nondiscriminatory basis and which are geographically accessible to all without legal or administrative restriction. The provisions of section 321(a) shall apply to both direct and indirect loans made through foreign subsidiaries. It is the commitee's intent that this provision not affect U.S. bank loans to private entities in South Africa.

Subsection (b) of section 321 provides that subsection (a) shall not apply to loans or extensions of credit for which agreement is entered into prior to the date of enactment of the bill.

*Section 322—Gold coins*

Section 322 of the bill prohibits the importation into the United States of South African krugerrands or other South African gold coins which are minted in South Africa or offered for sale by the South African Government. The commitee intends that this provision not prevent U.S. residents from buying and holding krugerrands abroad or from holding or trading South African gold coins that have been imported prior to the enactment of the bill.

*Section 323—Enforcement and penalties*

Subsection (a) of section 323 directs the Secretary, in consultation with the Secretaries of Commerce and Treasury, to enforce subtitle 2, including issuing regulations, establishing monitoring mechanisms, and referring information on violations to the Attorney General. Subsections (b) and (c) establish penalties for violations.

*Section 324—Waiver by President*

Section 324 of the bill allows the President to waive for periods of not more than 1 year the prohibitions contained in sections 321 and 322 of subtitle 2 if he determines that the Government of South Africa "has made substantial progress toward full participation of all the people of South Africa in the social, political, and economic life in that country and toward an end to discrimination based on race or ethnic origin." The President shall submit such determination and the basis therefor to Congress. The waiver shall take effect 30 legislative days after the submission to Congress unless both Houses of Congress, within the 30-day period, adopt a concurrent resolution disapproving the determination.

*Subtitle 3—General Provisions*

*Section 331—Cooperation of other departments and agencies*

Section 331 of the bill directs other Government departments and agencies to cooperate with the Secretary in carrying out the provisions of title III of this bill, and authorizes the Secretary to secure necessary information directly from any such department or agency. The committee notes that the Secretary may, for example, decide to reduce the burden of enforcement upon the Department of State by requesting assistance from fair employment experts in the Department of Labor.

*Section 332—Definitions*

Section 332 of the bill sets forth definitions of "U.S. persons," "Secretary," "South Africa," and "control." The committee notes that the definition of "control" is identical to that contained in the regulations issued by the Secretary of Commerce pursuant to section 8 ("Foreign Boycotts") of the Export Administration Act of 1979.

*Section 333—Applicability to evasions of title*

Section 333 of the bill makes the provisions of subtitles 1 and 2 of title III applicable to persons who act to evade the provisions of these

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subtitles. For example, it is the committee's intent that this provision deter a corporation from shifting its exports to South Africa to a European subsidiary as a means of evading a penalty for noncompliance with subtitle 1: or deter a bank from routing its loan business with South Africa through a foreign intermediary bank as a means of evading the provisions of subtitle 2.

*Section 334—Construction of title and severability*

Subsection (a) of section 334 provides that nothing in the bill is to be construed as recognition by the United States of the "homelands" in South Africa referred to in section 332(3) of title III. Subsection (b) provides a severability clause.

## Required Reports Section

### COST ESTIMATE

The committee estimates that, assuming the full appropriation of the amounts authorized in this bill, the total budget authority required to carry out the provisions of H.R. 3231 will be $125,058,000 for fiscal years 1984 and 1985. The fiscal year allocation of the total cost is set forth in the Congressional Budget Office estimate below. The committee agrees with the projected cost estimate of the Congressional Budget Office.

### INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 3231 will have no identifiable inflationary impact. In fact, the authorization is $8 million below the executive branch's request for export controls functions, and the authority for controls on products in short supply will serve to dampen inflation caused by scarce supplies of a particular product.

### STATEMENTS REQUIRED BY CLAUSE 2(l)(3) OF HOUSE RULE XI

(*a*) *Oversight findings and recommendations*

H.R. 3231 is the result of extensive hearings and oversight activity of the Subcommittee on International Economic Policy and Trade. In 1983 alone the subcommittee held eight hearings, two closed briefings, and four markup sessions. Oversight activity included a staff mission to investigate the activities of Operation Exodus, a program of the Customs Service to enforce export controls, at several ports. The committee also considered two studies by the General Accounting Office: "Export Control Regulation Could Be Reduced Without Affecting National Security" (GAO/ID-82-14, May 26, 1982) and "Details of Certain Controversial Export Licensing Decisions Involving Soviet Bloc Countries" (GAO/ID-83-46, May 5, 1983).

(*b*) *Budget authority*

The enactment of H.R. 3231 will create no new budget authority.

(*c*) *Committee on Government Operations summary*

No oversight findings and recommendations which relate to the Export Administration Act of 1979 or to this legislation have been re-

ceived from the Committee on Government Operations under clause 4(c) of rule X of the rules of the House.

(*d*) *Congressional Budget Office cost estimate*

JUNE 16, 1983.

1. Bill Number: H.R. 3231.
2. Bill title: A bill to amend the authorities contained in the Export Administration Act of 1979, and for other purposes.
3. Bill status: As ordered reported by the House Committee on Foreign Affairs, June 9, 1983.
4. Bill purpose:

Title I of H.R. 3231 amends the Export Administration Act of 1979. It authorizes the appropriation of $24.6 million in each of the fiscal years 1984 and 1985, as well as such amounts as may be necessary for adjustments in pay, retirement, and other benefits as provided by law, for the Department of Commerce (DOC) to carry out the provisions of this title. Title I would also make a number of changes in enforcement, licensing, and procedures affecting the export of a variety of goods and commodities.

Title II authorizes the appropriation of $100.5 million for each of the years 1984 and 1985 for export promotion programs of the DOC.

Title III, the U.S. Policy Toward South Africa Act of 1983, would require implementation and enforcement of fair employment standards, prohibit certain commercial transactions, and make a number of other changes affecting U.S. firms operating in South Africa with more than 20 employees.

The President has requested $113.2 million in fiscal year 1984 for export enforcement and promotion within the DOC, in addition to funds requested for similar purposes for the U.S. Customs Service. Fiscal year 1983 funds presently available for these DOC programs total $99.5 million.

5. Estimated cost to the Federal Government: The estimated budget impact of the funding authorized by this bill is shown in the following table.

[By fiscal year, in millions of dollars]

| | 1984 | 1985 | 1986 | 1987 | 1988 |
|---|---|---|---|---|---|
| Authorization level: | | | | | |
| Specified—function 370 | 125.1 | 125.1 | ..... | ..... | ..... |
| Estimated—function 920 | 1.4 | 1.2 | ..... | ..... | ..... |
| Total | 126.5 | 126.3 | ..... | ..... | ..... |
| Estimated outlays: | | | | | |
| Function 370 | 84.8 | 111.7 | 40.3 | 13.4 | ..... |
| Function 920 | 1.3 | 1.2 | .1 | ..... | ..... |
| Total | 86.1 | 112.9 | 40.4 | 13.4 | ..... |

In addition, the bill would require some additional effort on the part of several Government agencies, including the Departments of Agriculture and State, and the General Accounting Office. Although no funds are specifically authorized in H.R. 3231 for these requirements, which include issuing reports, additional analyses, coordination, monitoring, and rulemaking, it is expected that these provisions could cost the Federal Government $1 million to $3 million in each of the fiscal years 1984 and 1985.

Basis of estimate: For purposes of this estimate, it was assumed that the amounts authorized in the bill would be appropriated prior to the beginning of each fiscal year. In addition, authorizations for pay and other benefit increases in title I were estimated based on CBO's baseline projections. Outlays reflect historical spending patterns.

Section 117 of this bill would extend the exceptions and restrictions on the export of oil transported through the Trans-Alaska Pipeline until September 30, 1987. Since the Mineral Leasing Act of 1920 also limits exports of the same type of oil, this provision is not expected to result in any change in policy.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Mary Maginniss.
10. Estimate approved by:

ROBERT A. SUNSHINE
(For James L. Blum,
Assistant Director for Budget Analysis).

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed it shown in roman):

## EXPORT ADMINISTRATION ACT OF 1979

AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1979".

### FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, [which would strengthen the Nation's economy] *consistent with the economic, security, and foreign policy objectives of the United States.*

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can curtail the efforts of American business to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes given special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to achievement of a positive balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

*(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment that are banned or severely restricted for use in the United States, which exports could affect the international reputation of the United States as a responsible trading partner.*

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) * * *

* * * * * * *

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

*(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so requires protecting the ability of scientists and other scholars freely to communicate their research*

*findings by means of publication, teaching, conferences, and other forms of scholarly exchange.*

*(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as the credibility of the United States as a responsible trading partner.*

GENERAL PROVISIONS

SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

[(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.]

*(2) Licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of a validated license for each such export, including but not limited to the following:*

*(A) A qualified general license, authorizing exports of goods for approved end uses.*

*(B) A distribution license, authorizing exports of goods to approved distributors or users of the goods.*

*(C) A project license, authorizing exports of goods or technology for a specified activity.*

*(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.*

*(E) A comprehensive operations license, authorizing exports of goods or technology between and among a domestic concern and foreign subsidiaries, affiliates, vendors, joint venturers and licensees of that concern which are approved by the Secretary.*

* * * * * * *

NATIONAL SECURITY CONTROLS

SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States from diverting critical technologies to military use, the difficulty United States. *The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of countries to which exports of such goods or technology are controlled under this section.* The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2)(A) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(B) Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of divising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries that pose a threat to the security of the United States. Such regulations shall not be based upon the assumption that such effective safeguards can be devised.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—In administering export controls for national security purposes under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate. The President shall review not less frequently than every 3 years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence. *No authority or permission to export may be required under this section before goods or technology are exported in the case of exports to a country which maintains export controls on such goods or technology cooperatively with the United States, except that the Secretary may require an export license for the export of such goods or technology to such end users as the Secretary may specify by regulation. The Secretary may also by regulation require any person exporting any such goods or technology otherwise subject to export controls under this section to notify the Department of Commerce of those exports.*

(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the commodity control list, a list of all goods and

technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

(3) The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every 3 years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulation shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendations received from any agency.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment, and

(C) goods accompanied by sophisticated operation, application, or maintenance know-how,

which are not possessed by countries to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

[(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1980.

[(5) The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.

[(6) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.]

*(4)(A) The Secretary and the Secretary of Defense shall complete the integration of the list of militarily critical technologies into the commodity control list not later than April 1, 1985. The integration of the list of militarily critical technologies into the commodity control list shall be completed with all deliberate speed, and the Secretary and the Secretary of Defense shall report to the appropriate committees of the Congress, before April 1, 1985, any circumstances which would preclude the completion of the integrated list by that date. Such integrated list shall include only a good or technology with respect to which the Secretary finds that countries to which exports are controlled under this section do not possess that good or technology, or a similar good or technology, and the good or technology or similar good or technology is not available in fact to such a country from sources outside the United States in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, except in the case of a determination of the President with respect to goods or technology under subsection (f)(1) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than April 1, 1985, on actions taken to carry out this subparagraph. In any case in which it is determined that a good or technology should be included on the commodity control list completed pursuant to this subparagraph notwithstanding foreign availability, the report to Congress shall specify why inclusion of that good or technology would significantly benefit United States military or national security.*

*(B) The General Accounting Office shall evaluate the efforts of the Secretary and the Secretary of Defense to integrate the list of militarily critical technologies into the commodity control list, and the feasibility of such integration. In conducting such evaluation, the General Accounting Office shall determine whether foreign availability was used as a criterion in developing the commodity control list pursuant to subparagraph (A) and whether the completed list reflected the intent of the Congress in enacting this subsection. In conducting such evaluation, the General Accounting Office shall have access to all information relating to the list of militarily critical technologies, and representatives of the General Accounting Office designated by the Comptroller General may attend any meetings held in the executive branch with respect to such list. The appropriate officers or employees shall notify the General Accounting Office of when and where any such meeting will be held. Not later than April 1, 1985, the General Accounting Office shall submit a detailed report to the Congress on the results of the evaluation conducted pursuant to this subparagraph.*

*(C) The Secretary and the Secretary of Defense, in completing the commodity control list pursuant to subparagraph (A), and the General Accounting Office, in conducting the evaluation pursuant to subparagraph (B), shall consider mechanisms to reduce significantly the list of militarily critical technologies, including evaluating for possible removal from the list those goods or technology which are in one or more of the following categories:*

*(i) Goods and technology the transfer of which would not lead to a significant near-term improvement in the defense capability of a country to which exports are controlled under this section.*

*(ii) A technology that is evolving slowly.*

*(iii) Technology that is not process-oriented.*

*(iv) Components used in militarily sensitive devices that in themselves are not sensitive.*

*(D) The reports submitted pursuant to subparagraphs (A) and (B) shall each include the results of the evaluation of the goods and technology set forth in subparagraph (C) and an evaluation of the feasibility of effectively imposing export controls on technologies as opposed to goods which are the products of these technologies.*

(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license in lieu of a validated license.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to these possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section of the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties of such multilateral agreement.

(4) No later than July 1, 1980, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.

*(5) The export of technology and related goods subject to export controls under this section, including items on the list of militarily critical technologies developed pursuant to subsection (d) of this section, shall be eligible for a comprehensive operations license which would authorize, over a period of years and to countries other than those described in section 620(f) of the Foreign Assistance Act of 1961, multiple exports and reexports between and among a domestic concern and foreign subsidiaries, affiliates, vendors, joint ventures, and licensees of that concern which are approved by the Secretary.*

*(6) The export to countries other than those described in section 620(f) of the Foreign Assistance Act of 1961 of goods and technology subject to export controls under this section shall be eligible for a distribution license or other licenses authorizing multiple exports. The Secretary shall periodically monitor exports made pursuant to such licenses in order to insure compliance with the provisions of this Act.*

(f) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation, establish, that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject

to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

[(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligent information. In assessing foreign availability with respect to license applications, uncorroborated representatives by applicants shall not be deemed sufficient evidence of foreign availability.] *(3) With respect to export controls imposed under this section, in making any determination of foreign availability, the Secretary shall accept the representations of applicants unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, and intelligence information.*

(4) [In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability.] *In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall take the necessary steps to conduct negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. If, within 6 months after the President's determination, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved.* Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to countries to which exports are controlled under this section and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

[(5) In order to further carry out the policies set forth in this Act, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.]

*(5) The Secretary shall establish in the Department of Commerce an Office of Foreign Availability which shall be under the direction of the Assistant Secretary of Commerce for Trade Administration. The Office shall be responsible for gathering and analyzing all the*

*necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office during that 6-month period. Such information shall include a description of every determination made under this Act during that 6-month period that foreign availability did not exist, together with an explanation of that determination.*

(6) Each department or agency of the United States with reponsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of [Export Administration] *Foreign Availability* concerning foreign availability of goods and technology subject to export controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

*(7) The Secretary shall issue regulations with respect to determinations of foreign availability under this Act not later than 6 months after the date of the enactment of the Export Administration Amendments Act of 1983.*

(g) INDEXING.—In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. *The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of countries to which exports are controlled for national security purposes.* Any such goods or technology which no longer meet the performance levels established by the [latest such increase] *regulations* shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(h) TECHNICAL ADVISORY COMMITTEES.—(1) * * *

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(6) Whenever a technical advisory commitee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United

States in multilateral export controls, in sufficient quantity and of sufficient quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, [and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigate such availability, and if such availability is verified, the Secretary shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained nothwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.] *the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that (A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability, (B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or (C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist. To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall take the necessary steps to conduct such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved.*

(i) MULTILATERAL EXPORT CONTROLS.—The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to

and enforceable by all governments participating in the Committee.

(4) Agreement on more effective procedures for enforcing the export controls agreed to pursuant to paragraph (3).

*(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for the Committee, and improve the structure and function of the Secretariat of the Committee by upgrading professional staff, translation services, data base maintenance, communications, and facilities.*

*(6) Agreement to strengthen the Committee so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the benefit of all participants.*

(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which, for commercial purposes, enters into any agreement with any agency or the government of a country to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency to the Secretary.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, *including those countries not participating in the group known as the Coordinating Committee*, regarding their cooperation in restricting the export goods and technology in order to carry out the policy set forth in [section 3(9)] *paragraphs (9) and (10) of section 3* of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions.

(l) DIVERSION TO MILITARY USE OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence that goods or technology, which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes, have been diverted to significant military use in violation of the conditions of an export license, the Secretary for as long as that diversion to significant military use continues—

(A) shall deny all further exports to the party responsible for that diversion of any goods or technology subject to national security controls under this section which contribute to that particular military use, regardless of whether such goods or technology are available to that country from sources outside the United States; and

(B) may take such additional steps under this Act with respect to the party referred to in subparagraph (A) as are feasible

to deter the further military use of the previously exported goods or technology.

(2) As used in this subsection, the terms "diversion to significant military use" and "significant military use" means the use of United States goods or technology to design or produce any item on the United States Munitions List.

*(m) REMOVAL OF CERTAIN CONTROLS.—(1) In any case in which, during any 1-year period in which export license applications have been filed for the export of a good subject to an export control under this section, all such license applications have been approved to a country group, the Secretary shall, at the end of that 1-year period, remove the export control on exports of that good to that country group, except that the Secretary may require an export license for the export of that good to such end users in that country group as the Secretary may specify by regulation.*

*(2) This subsection shall not apply to export controls which the United States maintains cooperatively with any other country.*

*(n) GOODS CONTAINING MICROPROCESSORS.—Export controls may not be imposed under this section on a good solely on the basis that the good contains an embedded microprocessor, if such microprocessor cannot be used or altered to perform functions other than those it performs in the good in which it is embedded. An export control may be imposed under this section on a good containing such a microprocessor only on the basis that the functions of the good itself are such that the good, if exported, would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States.*

FOREIGN POLICY CONTROLS

SEC. 6. (a) AUTHORITY.—(1) [In order to carry out the policy set forth in paragraph (2)(B), (7), or (8) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.] *In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation from the United States of any goods, technology, or other information produced in the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.* [The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

*(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.*

[(2)] *(3)* Export control maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, which-

ever is later, unless extended by the President in accordance with subsections (b) and (e). Any such extension and any subsequent extension shall not be for a period of more than one year.

[(3)] *(4)* Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) or this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

[(4)] *(5)* In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

[(b) CRITERIA.—When imposing, expanding, or extending export controls under this section, the President shall consider—

(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

(2) the compatibility of the proposed controls with the foreign policy objectives of the United States. including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

(5) the ability of the United States to enforce the proposed controls effectively; and

(6) the foreign policy consequences of not imposing controls.]

*(b) CRITERIA.—When imposing, expanding, or extending export controls on goods or technology under this section, the President shall consider whether—*

*(1) the intended foreign policy purposes of the proposed controls can be achieved through negotiations or other alternative means;*

*(2) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;*

*(3) the proposed controls will have an adverse effect on the economic or political relations of the United States with other friendly countries;*

*(4) the proposed controls will have a substantial adverse effect on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a reliable supplier of goods and technology, or on the economic well-being of individual United States industries, companies, and their employees and communities;*

*(5) the United States has the ability to enforce the proposed controls effectively;*

*(6) the proposed controls are likely to achieve the intended foreign policy purpose; and*

*(7) (A) the good or technology, or a similar good or technology, is available in sufficient quantity from sources outside the United States to the country to which exports are to be subject to the proposed controls, or (B) negotiations have been successfully concluded with the appropriate foreign governments to ensure the cooperation of such governments in controlling the export of such good or technology to the country to which exports are to be subject to the proposed controls, except that the preceding provisions of this paragraph shall not apply if the President determines that the proposed controls are necessary to further efforts by the United States to counter international terrorism or to promote observance of internationally recognized human rights.*

(c) CONSULTATION WITH INDUSTRY.—The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.

*(d) CONSULTATION WITH OTHER COUNTRIES.—Before export controls are imposed under this section, the President should consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b) and such other matters as the President considers appropriate.*

[(d)] *(e)* ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

[(e)] NOTIFICATION TO CONGRESS.—The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 7(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying—

(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and

(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending,

or expanding the control without attempting any such alternative means.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.]

*(f) CONSULTATION WITH THE CONGRESS.—(1) The President may impose, expand, or extend export controls under this section only after consultation with the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.*

*(2) Following consultation with the Congress in accordance with paragraph (1) and before imposing, expanding, or extending export controls under this section, the President shall submit to the Congress a report—*

*(A) indicating how the proposed export controls will further, significantly, the foreign policy of the United States or will further its declared international obligations;*

*(B) specifying the conclusions of the President with respect to each of the criteria set forth in subsection (b), and any possible adverse foreign policy consequences;*

*(C) describing the nature, the subjects, and the results of the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);*

*(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and*

*(E) describing the availability from other countries of goods or technology comparable to the goods of technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.*

*The concerns expressed by Members of Congress during the consultations required by this subsection shall be specifically addressed in each report submitted pursuant to this paragraph.*

*(3) To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.*

*(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3) of this Act.*

[(f)] *(g)* EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine or medical supplies. *This section also does not authorize export controls on donations of goods, such as food and clothing, intended to be used to relieve human suffering.* Before export

controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency in the case of exports controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act or to any export control on food which is in effect on the date of the enactment of the Export Administration Amendments Act of 1981. *The President may impose export controls under this section on medicine medical supplies, food, and donations of goods without regard to the other provisions of this subsection in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.*

[g] (*h*) FOREIGN AVAILABILITY.—In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

[h] (*i*) INTERNATIONAL OBLIGATION.—The provisions of subsections (b), (c), (d), [(f), and (g)] (*e*), (*g*), *and* (*h*) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

[(i)] (*j*) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on For-

eign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

(1) Such country has repeatedly provided support for acts of international terrorism.

(2) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

*Any such determination which has been made with respect to a country may not be rescinded unless the President first submits to the Congress a report justifying the rescission and certifying that the country concerned has not provided support for international terrorism, including support for groups engaged in such terrorism, for the preceding 12-month period.*

[(j)] *(k)* CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. *Notwithstanding any other provision of this Act, any determination of the Secretary—*

*(A) of what goods or technology shall be included on the list established pursuant to subsection (l) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, or*

*(B) to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,*

*except that if the Secretary does not agree with the Secretary of State with respect to any such determination, the matter shall be referred to the President for resolution.*

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

[(k)] *(l)* CONTROL LIST.—The Secretary shall establish and maintain, as part of the commodity control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. Such goods or technology shall be clearly identified as subject to controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United

States, or any of its territories or possession, of goods and technology comparable to those controlled for export from the United States under this section.

*(m) EFFECT OF CONTROLS ON EXISTING CONTRACTS AND LICENSES.—Any export controls imposed under this section shall not affect any contract to export entered into before the date on which such controls are imposed or any export license issued under this Act before such date. The preceding sentence shall not apply in a case in which the export controls imposed relate directly, immediately, and significantly to actual or imminent acts of aggression or of international terrorism, to actual or imminent gross violations of intenationally recognized human rights, or to actual or imminent nuclear weapons tests, in which case the President shall promptly notify the Congress of the circumstances to which the export controls relate and of the contracts or licenses affected by the controls. Any export controls described in the preceding sentence shall affect existing contracts and licenses only so long as the acts of aggression or terrorism, violations of human rights, or nuclear weapons tests continue or remain imminent. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.*

*(n) EXPANDED AUTHORITY TO IMPOSE CONTROLS.—(1) In any case in which the President determines that it is necessary to impose controls under this section—*

*(A) with respect to goods, technology, other information, or persons other than that authorized by subsection (a)(1) of this section; or*

*(B) without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section,*

*the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days of continuous session after the Congress receives the determination and report of the President, that joint resolution shall immediately be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days of continuous session after its referral, such committee shall be deemed to be discharged from further consideration of the resolution.*

*(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on a determination of the President under section 6(n)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.", with the date of the receipt of the determination and report inserted in the blank.*

*(3) For purposes of this subsection—*

*(A) continuity of session is broken only by an adjournment of the Congress sine die, and*

*(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.*

*(o) EXTENSION OF CERTAIN CONTROLS.—Those export controls imposed under this section which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983 (except those controls with respect to the 1980 summer Olympic games), shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.*

SHORT SUPPLY CONTROLS

Sec. 7. (a) * * *

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[(c) PETITIONS FOR MONITORING OR CONTROLS.—(1) (A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may transmit a written petition to the Secretary requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2) (C) of this Act.]

*(c) PETITIONS FOR MONITORING OR CONTROLS.—(1) (A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a susbtantial segment of an industry which processes metallic materials capable of being recycled (i) with repect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, is or may be a substantial cause of adverse effect on the national economy or any sector thereof or on a domestic industry, and (ii) with respect to which a significant increase in exports is or may be a substantial cause of adverse effect on the national economy or any sector thereof or on a domestic industry, may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2) (C) of this Act.*

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating (i) that there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply, [and] (ii) that there has been a significant increase in the price of such material or a domestic shortage of such material under circumstances indicating

the price increase or domestic shortage may be related to exports, *and (iii) that the criteria set forth in paragraph (3)(A) of this subsection are satisfied.*

*(C)(i) For purposes of this subsection, the term "substantial cause" means a cause which is important and not less than any other cause.*

*(ii) Before March 1, 1984, the Secretary shall issue regulations, in accordance with section 553 of title 5, United States Code, which define the operative terms contained in section 3(2)(C) of this Act and in this subsection, including but not limited to the following: "excessive drain", "scarce materials", "serious inflationary impact of foreign demand", "domestic shortage", "increase in domestic prices" and "increase in the domestic price", "representative of an industry or a substantial segment of an industry", "domestic industry", "specific period of time", "national economy or any sector thereof", "significant increase in exports", and "adverse effect".*

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall (A) include the name of the material which is the subject of the petition, (B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States, (C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and (D) provide that interested persons shall have a period of 30 days commencing with the date of publication of such notice to submit to the Secretary written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved. At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

[(3) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall—

(A) determine whether to impose monitoring or controls, or both, on the export of such material, in order to carry out the policy set forth in section 3(2)(C) of this Act; and

(B) publish in the Federal Register a detailed statement of the reasons for such determination.]

*(3)(A) Within 45 days after the end of the 30-day or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material which is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether——*

*(i) there has been a significant increase, in relation to a specific period of time, in exports of such material;*

*(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material and exports are a substantial cause of such domestic price increase or domestic shortage;*

*(iii) exports of such material are or may be a substantial cause of adverse effect on the national economy or any sector thereof or on a domestic industry; and*

*(iv) monitoring or controls or both are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.*

*(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination.*

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days following the publication of such proposed regulations, and after considering any public comments thereon, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses thereto, which involve the same or related materials.

[(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after consideration of the prior petition has been completed does not merit complete consideration under this subsection.]

*(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary shall not consider any other petition with respect to the same material or group of materials which is filed within 6 months after final action on the prior petition has been completed.*

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

[(8) The Secretary may impose monitoring or controls on a temporary basis after a petition is filed under paragraph (1)(A) but before the Secretary makes a determination under paragraph (3) if the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.]

[9] *(8)* The authority under this subsection shall not be construed to affect the authority of the Secretary under any [other provision of this Act] *provision of this Act other than this section.*

[(10)] *(9)* Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required

under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

*(10) Notwithstanding subsection (a) or (b) of this section, no action in response to an informal or formal request by any entity described in paragraph (1)(A) of this subsection to impose controls on or monitor the export of metallic materials capable of being recycled shall be taken under this section except pursuant to this subsection. The Secretary, in any other case, may not impose controls on or monitor the export of metallic materials capable of being recycled unless the Secretary makes the determination required by paragraph (3)(A) of this subsection with respect to such controls or monitoring and complies with paragraph (3)(B) with respect to that determination.*

(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) * * *

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*(4) Notwithstanding the provisions of section 20 of this Act, the provisions of this subsection shall expire on September 30, 1987.*

(e) REFINED PETROLEUM PRODUCTS.—(1) [No] *In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no* refined petroleum products may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

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(g) AGRICULTURAL COMMODITIES.—(1) * * *

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(3) If the authority conferred by this section or section 6 is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. [If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution.] *If the Congress, within 60 days after the date of its receipt of such report, does not adopt a joint resolution approving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective at the end of that 60-day period.* In the computation of such [30-day] *60-day* period, there shall be excluded the days on which either House is not in session because of an adjournment of more than

3 days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereof; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs *harvested from State or Federal lands* may be exported from the United States.

(2) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(3) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(4) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber without wane;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) EXPORT OF HORSES.—(1) Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, or any of its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.

(2) The Secretary, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers, permitting the export by sea of a specified consignment of horses, if the Secretary, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

*(k) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—Any export controls imposed under this section shall not affect any contract to export entered into before the date on which such controls are imposed, including any contract to harvest unprocessed western red cedar (as defined in subsection (i)(4) of this section) from State lands, the performance of which contract would make the red cedar available for export. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.*

FOREIGN BOYCOTTS

SEC. 8. * * *

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PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; *OTHER INQUIRIES*

SEC. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such depart-

ments and agencies shall cooperate fully in rendering such information and recommendations.

(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section.

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) ACTION ON CERTAIN APPLICATIONS.—In each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within [90] *60* days after a properly completed application has been submitted pursuant to this section.

(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—In each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 30 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding

sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2) If the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 30-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) ACTION BY THE SECRETARY.—(1) Within 90 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 90-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations.

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant *in writing* of the specific questions raised and any such negative considerations or recommendations[, and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations]. *Before a final determination with respect to the application is made, the applicant shall be entitled—*

*(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and*

*(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.*

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of the determination, of the statutory basis for *the proposed* denial, the policies set forth in section 3 of the Act which would be furthered by *the proposed* denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the [denial] *determination to deny the application*, and of the availability of appeal procedures. *The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied.* In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

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*(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the secretary changes the requirements for such a license application. the secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.*

*(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the commodity control list, the Secretary shall, within 10 days after receipt of the request, inform the person making the request of the proper classification.*

*(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.*

VIOLATIONS

SEC. 11. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater. or imprisoned not more than 5 years. or both.

(b) WILLFUL VIOLATIONS.—(1) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

For purposes of this paragraph, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

*(3) Any person who conspires or attempts to export anything contrary to any provision of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in sub-*

*section (a), except that in the case of a violation of an export control imposed under section 5 of this Act, such person shall be subject to the penalties set forth in paragraph (1) of this subsection.*

*(4) Any person who possesses any goods or technology—*

*(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control; or*

*(B) knowing or having reason to believe that the goods or technology would be so exported;*

*shall, in the case of a violation of an export control imposed under section 5, be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6, be subject to the penalties set forth in subsection (a).*

*(5) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of a foreign policy or national security control, such person shall be subject to the penalties set forth in paragraph (1) of this subsection.*

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

*(3) An exception to any order issued under this Act which revokes the authority of a United States person to export goods or technology may not be made unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.*

(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

[c] (*e*) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) *or any property interest or proceeds forfeited pursuant to subsection* (*f*) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

*(f) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—Any person who is convicted of a violation of an export control imposed under section 5 of this Act shall, in addition to any other penalty, forfeit to the United States (A) any property interest that person has in the goods or technology that were the subject of the violation or that were used to facilitate the commission of the violation, and (B) any proceeds derived directly or indirectly by that person from the transaction from which the violation arose.*

[f] (*g*) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

[g] (*h*) OTHER AUTHORITIES.—Nothing in subsection (c), (d), [or (f)] (*f*), *or* (*g*) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 12. (a) GENERAL AUTHORITY.—(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

*(2) The Secretary may designate any officer or employee of the Department of Commerce to do the following in carrying out enforcement authorities under this Act:*

*(A) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.*

*(B) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.*

*(C) Search without warrant or process any person, place, or vehicle on which, and any baggage in which, the officer or employee has probable cause to believe there are goods or technology being exported or about to be exported in violation of this Act.*

*(D) Seize without warrant or process any goods or technology which the officer or employee has probable cause to believe have been, are being, or are about to be exported in violation of this Act.*

*(E) Carry firearms in carrying out any activity described in subparagraphs (A) through (D).*

*(3)(A) Notwithstanding any other provision of law, the authority of customs officers with respect to violations of this Act shall be limited to (i) inspection of or other search for and detention and seizure of goods or technology at those places in which such officers are authorized by law to conduct such searches, detentions, and seizures, and (ii) any investigation conducted prior to such inspection, search, detention, or seizure. Upon seizure by any customs officer of any goods or technology in the enforcement of this Act, the matter shall be referred to the Department of Commerce for further investigation and other appropriate action under this Act.*

*(B) In conducting inspections of goods and technology in the enforcement of this Act, the United States Customs Service shall limit those inspections to goods and technology with respect to which the Customs Service has received specific information of possible violations of this Act, and shall not conduct random inspections which would result in the detainment of shipments of goods or technology that are in full compliance with this Act.*

*(C) Notwithstanding any other provision of law, not more than $14,000,000 may be expended by the United States Customs Service in any fiscal year in the enforcement of export controls.*

*(4) All provisions of law relating to the seizure, forfeiture, and condemnation of articles for violations of the customs laws, the disposition of such articles or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subsection or section 11(f) of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for the purposes of this subsection and section 11(f) of this Act, be exercised or performed by the Secretary or by such persons as the Secretary may designate.*

* * * * * * *

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVEW

SEC. 13. (a) EXEMPTION.—Except as provided in section [11(c)(2)] *sections 7(c)(1)(C)(ii) and 11(c)(2)*, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

ANNUAL REPORT

SEC. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentially of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry out section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(5);

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

*(11) the removal of export controls on goods pursuant to section 5(m);*

[11] *(12)* the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

[12] *(13)* export controls and monitoring under section 7;

[13] *(14)* the information contained in the reports required by section 7(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

[14] *(15)* actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

[15] *(16)* organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an analysis of the time required to process license applications, the number and disposition of export license applications taking more than 90 days to process, and an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

[16] *(17)* delegations of authority by the President as provided in section 4(e) of this Act;

[17] *(18)* efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

[18] *(19)* any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review re-

quired by section 12(e), to simplify regulations issued under this Act;

[19] (*20*) violations under section 11 and enforcement activities under section 12; and

[20] (*21*) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

* * * * * * *

EFFECT ON OTHER ACTS

SEC. 17. (a) IN GENERAL.—[Nothing] *Except as otherwise provided in this Act, nothing* contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act. For purposes of this subsection, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—Notwithstanding any other provision of law, no appropriation shall be

made under any law to the Department of Commerce for expenses to carry out the purposes of this Act unless previously and specifically authorized by law.

[(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

[(1) $9,659,000 for each of the fiscal years 1982 and 1983; and

[(2) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.]

*AUTHORIZATION OF APPROPRIATIONS*

*SEC. 18 (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—*

*(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1983; or*

*(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.*

*(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.*

*(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1983 which specifically repeals, modifies, or supersedes the provisions of this subsection.*

*(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—*

*(1) $24,600,000 for each of the fiscal years 1984 and 1985, of which for each such fiscal year $15,000,000 shall be available only for enforcement, $2,100,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and $7,500,000 shall be available for all other activities under this Act; and*

*(2) such additional amounts for each such fiscal year as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.*

* * * * * * *

[TERMINATION DATE

[SEC. 20. The authority granted by this Act terminates on September 30, 1983, or upon any prior date which the President by proclamation may designate.]

*TERMINATION DATE*

*SEC. 20. The authority granted by this Act terminates on September 30, 1985.*

SAVINGS PROVISIONS

SEC. 21. (a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

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SECTION 38 OF THE ARMS EXPORT CONTROL ACT

SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.—(a) * * *

* * * * * * *

(e) In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and [(f)] (*g*) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act, subject to the same terms and conditions as are applicable to such powers under such Act. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress.

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## MINORITY VIEWS OF HON. TOBY ROTH, HON. HENRY J. HYDE, HON. GERALD B. H. SOLOMON, AND HON. MARK D. SILJANDER

In 1979, the Committee on Foreign Affairs undertook a thorough examination and revision of the Export Administration Act. The Subcommittee on International Economic Policy and Trade and the full Committee met twenty-three times to develop the Export Administration Act Amendments of 1979. The Report on that legislative initiative was unanimous. The principal objectives of the 1979 Export Administration Act were: (1) "to reduce the number of items subject to validated license controls;" (2) "to increase and improve the scrutiny devoted to items remaining subject to validated license controls and of greatest potential significance to the military capability of countries threatening U.S. national security;" (3) "to improve the efficiency of the licensing process;" and (4) "to establish a set of criteria and procedural requirements to govern the use of foreign policy controls."

Many provisions contained in the Export Administration Amendments Act of 1983 depart from these objectives. The 1979 Act was based on the careful integration of the objectives of promoting exports, protecting national security and crafting foreign policy. The legislation was designed to encourage cooperation between the President and Congress to administer and enforce the provisions of the statute.

In contrast, in a number of instances, the 1983 amendments establish an adversarial relationship between Congress and the Executive Branch. In both the sections on national security and foreign policy controls, amendments were approved which impose on the Executive Branch unreasonable and impracticable requirements to either eliminate certain national security controls or severely limit the scope of foreign policy controls.

### NATIONAL SECURITY CONTROLS COCOM LICENSING

A major objection arises from the decision to eliminate the requirement for validated export licenses for exports of U.S. goods and technologies to CoCom countries, the export of which is controlled to other countries. This amendment shifts entirely the burden of enforcing multilateral export controls to the member states of CoCom (NATO minus Iceland and Spain, plus Japan). All other major trading countries within CoCom (except within the Benelux countries and between the U.S. and Canada) maintain a requirement for export licenses to other CoCom partners. There is, however, no uniformity in the manner in which individual CoCom countries review proposed exports. There is an effort underway to harmonize licensing procedures and the Committee's amendment to eliminate licenses undermines this effort. In the future it will be exceedingly difficult, if not impossible, for the United States to achieve a higher level of export control

enforcement by CoCom if West-West licenses are eliminated. Had CoCom functioned as an effective international control mechanism, West-West licensing requirements would not have been necessary or kept to a minimum. But CoCom has survived because it adopts the lowest denominator of export controls. Its controls are merely recommendations and have no legal standing in the laws of member states. Actual enforcement of controls rests with individual countries. Because of differences among CoCom countries in interpreting CoCom controls, the ability of individual members to veto exports through CoCom becomes meaningless. In addition a number of CoCom countries lack effective enforcement programs. In many instances CoCom countries do not seek CoCom approval to export products subject to CoCom controls.

In its 1979 Report, the Committee felt "that the President should offer a reduction in the scope of controls [to CoCom] in exchange for more effective enforcement procedures." The General Accounting Office (GAO) made a similar recommendation to reduce or eliminate intra-CoCom exports "by exploring various alternatives that would satisfy control objectives." This formulation offers the best hope to improve the multilateral system of export controls to forestall the acquisition by the Soviet Union and other potential adversaries, of Western science, technology, and products which have significant military applications.

We endorse the objective of reducing the number of individual export licenses for shipments to CoCom countries. This will minimize the burden on American business of complying with national security export controls. The Committee approved incorporation of three types of export licenses authorizing multiple exports into the Act. The distribution, project, and service supply licenses, and the new comprehensive operations license will significantly reduce the export licensing burden and enable U.S. firms to export their goods in a timely manner. The elimination of CoCom licensing for West-West trade goes too far and endangers the achievement of other export control objectives.

### UNILATERAL CONTROLS AND EMBEDDED MICROPROCESSORS

During its deliberations, the Committee voted to adopt a two-track approach to making national security controls more responsive to the community of American business. The Committee approved amendments which establish conditions compelling the President to eliminate certain national security export controls. One provision is designed to eliminate controls on goods and technologies which are unilaterally controlled by the United States. The Annual Report issued by the Department of Commerce on the Export Administration Act describes the specific items subject to unilateral export controls. Requiring the removal of export controls for these items, in whole or part, was not accompanied by a thorough analysis of the national security consequences of decontrol.

Another provision requires that goods containing non-reprogrammable microprocessors should be decontrolled because the overall function of the product would not make a significant contribution to the military capabilities of a potential adversary. This provision does

not take into account a major review by the Departments of Commerce and Defense to decontrol more than 90 categories of products containing imbedded micro-processors. This process integrates the objective of exports with considerations of national security.

Eliminating controls on a product by product basis, or to groups of countries is a piece-meal approach to simplifying the export licensing process. Rather, we endorse the Committee's 1979 report which states that "the factors involved in making licensing determinations are highly technical, which makes any Congressional role difficult." What is needed is a comprehensive review of the U.S. and CoCom control lists.

### MCTL

The Committee, however, endorsed an alternative and comprehensive approach to re-evaluating national security controls. That approach is to mandate a revision and completion of a Militarily Critical Technologies List (MCTL). Developing an MCTL was formally suggested in a 1976 report by the Defense Science Board entitled "An Analysis of Export Control of U.S. Technology—DOD Perspective." It argued the possibility of narrowing the focus of export controls to critical technologies, critical materials and keystone equipment. The Committee recognized that this objective would better protect the national security by safeguarding the top of the pyramid of science and technology. At the same time, the MCTL would significantly reduce the number of less sensitive products which are currently subject to export licenses and thereby benefit U.S. exporters.

The Commodity Control List (CCL) is the control list for the United States which guides the Department of Commerce in making licensing determinations. It is a public document and defines for exporters in technical terms the products subject to licensing requirements. The Committee envisaged that the MCTL would be integrated into the CCL and become the basis for an updated and considerably shortened Commodity Control List. During this integration process, the MCTL would serve as a negotiating document for the U.S. within CoCom to reform the list of items subject to multilateral export controls.

In H.R. 2971, the Committee continued to endorse the MCTL approach and incorporated into the bill a series of recommendations developed by the National Academy of Sciences in its report on "Scientific Communication and National Security." Notwithstanding foreign availability, the amendment requires that revising the MCTL take into account four additional factors, developed by the Academy, designed to result in "a drastic streamlining of the MCTL, by reducing its overall size to concentrate on technologies that are truly critical to national security." Furthermore, the amendment requires that the General Accounting Office oversee the integration process and report to Congress on a timely basis so that the Committee may exercise its appropriate oversight responsibilities.

### FOREIGN AVAILABILITY

A major area of concern for this Committee has been the ability of the Executive Branch to make foreign availability determinations. In its 1979 Report the Committee noted that while seeking:

> To make the process of export licensing accountable to the public and to the Congress, the Congress is simply not equipped to administer export controls or to make any day to day assessments and policy decisions that must be made in determining what proposed transactions should be restricted.

The Committee noted the necessity of Executive Branch agencies to have the expertise and responsibility to carry out the purposes of export controls. The amendment to establish within the Department of Commerce an Office of Foreign Availability, and a requirement that it issue regulations, is in concert with these objectives.

However, other sections on foreign availability depart significantly from the consensus which led to the 1979 Act. Accordingly, when the President makes a finding of foreign availability regarding items subject to unilateral controls, he is required to eliminate such foreign availability within six months through negotiations with other countries. If the President cannot eliminate the foreign availability, the Secretary of Commerce would be prohibited from requiring a validated export license for such goods and technologies. Considering that, at best, negotiations within CoCom to either add or delete items from the CoCom Control List takes a minimum of ten months, this time frame is completely impracticable and unrealistic.

Another provision establishes complex procedural requirements whereby the Technical Advisory Committees (TACs) would submit their certifications regarding foreign availability to both Congress and the Secretary of Commerce. The Commerce Department would then have 90 days after the submission from the TAC to investigate and report to the TACs and Congress regarding foreign availability. Where there is a finding of foreign availability, the Commerce Department would have the option of: (a) eliminating the requirement for validated license; (b) undertaking to eliminate foreign availability within six months; or (c) finding foreign availability does not exist. From our perspective these provisions may have the unintended result of compelling the Executive Branch to find that foreign availability does not exist.

### COCOM ENFORCEMENT

In the national security section, provisions were adopted giving the President a clear mandate to strengthen CoCom and its enforcement capabilities. However, under present circumstances CoCom's enforcement authorities do not extend beyond those verbal persuasion. For many years the Committee has recognized, that with very few exceptions, that certain CoCom members were unwilling or unable to prevent the diversion of critical technology from the West to the East. A provision was adopted by the Subcommittee, but stricken in full Committee, which gave the President the discretionary authority to restrict imports from companies which violate CoCom controls.

The concept of the United States undertaking unilateral action to enforce, for its part, CoCom controls is not without precedent. Although international economic and political circumstances have changed since the immediate post-war period, between 1951 and 1979, the Mutual Defense Assistance Control Act (Battle Act) mandated the termination of economic aid to countries not cooperating with U.S.

export controls. As the Committee noted in its 1979 report, "the United States has been fighting a losing battle to maintain controls on what other countries have been unwilling to control." The urgency of this "battle" is confirmed by the public record which contains studies, undertaken by governmental and non-governmental organizations, confirming the acquisition of advanced Western technology by the Soviet Union and its incorporation into Soviet weapons systems. Our concern is to strengthen CoCom and the necessity for member states to improve the effectiveness of their national security export controls.

### CHINA AMENDMENT

The Subcommittee approved an amendment which established a preferential licensing standard for the People's Republic of China. That standard would have required the United States to approve without exception, even for reasons of national security, the export of all goods and technologies at twice the technical level approved to the Soviet Union before the invasion of Afghanistan. In light of the Administration's efforts to liberalize trade with China, while maintaining an appropriate level of national security controls, this provision seemed unnecessary. Furthermore, it would have established the precedent of incorporating within the Act special licensing standards for individual countries. The amendment was withdrawn during the full Committee's consideration of the Act.

### FOREIGN POLICY CONTROLS

Another major area of disagreement rests with foreign policy export controls. The Committee in 1979 correctly identified the purposes of these controls. The Committee wrote:

> They can range from changing the human rights policy of another country; to inhibiting another country's capacity to threaten the security of countries friendly to the United States; to associating the United States diplomatically with one group of countries as against another; to disassociating the United States from a repressive regime. Unlike the situation with national security controls, some of these foreign policy purposes may be served by denying exports even where foreign availability exists.

The Committee further observed that:

> Decisions on foreign policy controls are often more political than technical, Congressional involvement in those decisions is more appropriate than in the case of national security controls.

"Involvement" is not synonymous with Congressional withdrawal of foreign policy controls.

Foreign policy controls have three aspects: (1) controlling exports from the United States; (2) applying such controls extraterritorially; and (3) making provision for the President to interfere with export contracts signed prior to the imposition of controls. We endorse the amendment which restores to the President the ability to place certain foreign policy objectives of the United States above pre-

existing export contracts. This amendment establishes four criterion (aggression, terrorism, human rights violations, and nuclear weapons tests) allowing the President to interfere with existing export contracts. These criteria are in accord with the intent of the Committee in writing the 1979 Export Administration Act and indicate a strong bipartisan approach to this particular issue.

### EXTRATERRITORIAL CONTROLS

With the exception of a Joint Resolution of Congress the President is denied the extraterritorial application of foreign policy controls. Many of our trading partners within CoCom seek to apply aspects of their trade laws extraterritorially. If the principle of extraterritoriality is a source of discord and conflict among the industrialized countries, then the appropriate course is to discuss the issue with the aim of developing mutually acceptable guidelines. Rather than effectively repealing this authority, the Congress has the option of adding definition to the United States concept of extraterritoriality. Such regulations were issued in the past under other statutes governing U.S. international economic policy. Furthermore, Congress can undertake discussions with the Executive Branch whereby regulations could clarify the extent of U.S. extraterritorial authority.

### U.S. TRADE POLICY

Foreign policy export controls illustrate that neither Congress nor the President has singular authority over U.S. trade policy. Constitutionally, Congress has the authority to regulate foreign commerce. But the Constitution also places the conduct of foreign relations in the hands of the President. The bridge between these two sets of Constitutional responsibilities is international trade legislation which defines the boundaries, guidelines, and negotiating objectives for the President. When either the President or Congress attempts to upset this balance, the system breaks down. The balance which permitted export control legislation to function for more than 30 years, is jeopardized by withdrawing important aspects of foreign policy controls.

We strongly favor establishment of the Department of Commerce as the agency within the Executive Branch to administer and enforce the Export Administration Act. A bipartisan effort is underway to streamline and modernize the international trade functions of the federal government. Concentrating responsibilities of EAA administration within the Department of Commerce is the option of choice to insure that authority and responsibility for export controls reside with one cabinet department. In turn, this facilitates the oversight responsibilities of the Committee.

### SOUTH AFRICA

Title III of the Act incorporates three provisions ostensibly directed against South Africa but which will damage U.S. business operations in that country. One provision seeks to apply a mandatory fair employment code on U.S. business operations in South Africa and provides for criminal penalties and other punitive measures against U.S.

companies which do not accurately report compliance with this Code. A second measure prohibits U.S. bank loans to governmental and quasi-governmental entities. A third bans the importation of gold coins minted in South Africa.

We strongly condemn apartheid. But even the proponents of these measures admit these sanctions will not measurably improve the condition of black South Africans. Moreover, two of these measures are wholly inconsistent with the action by the Committee to repeal, in the absence of a Joint Resolution, the President's ability to apply foreign policy controls extraterritorially.

We favor consideration of positive measures designed to improve the condition of black South Africans as opposed to legislation, the primary result of which will injure American business in a world economy defined by fierce competition.

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## ADDITIONAL VIEWS OF HON. OLYMPIA J. SNOWE

The Export Administration Act recently reported out of the Foreign Affairs Committee attempts to reconcile the export trade debate which pits national security concerns against U.S. commercial interests. The committee made some major changes in the Export Administration Act which I wholeheartedly support, but I do take issue with one segment in particular which was stricken from the committee bill.

In the Subcommittee on International Economic Policy and Trade, I offered an amendment to provide the President with the discretionary power to penalize violators of our multilateral trade agreements. I was disappointed that the full committee deleted this provision because it is needed to strengthen the trade agreements the United States presently has with many of its allies.

CoCom, which is comprised of the United States, Belgium, Canada, Denmark, France, West Germany, Italy, Luxemb rg, Netherlands, Norway, Portugal, Turkey, the United Kingdom, Greece, and Japan, is charged with ensuring that certain categories of high technology items under national security controls are not exported to the Soviet Union or the Eastern bloc. The United States adheres to these agreements and expects other CoCom members to do so as well. Unfortunately, CoCom has established a spotty record of enforcement in this area.

It is well documented that the Soviets have made great strides in enhancing their military capabilities over the past decade; and businesses operating under CoCom have been partially responsible for those Soviet improvements. Western high technology goods with direct and indirect military application have been exported to the Eastern bloc, thus greatly eroding Western security. Moreover, the Soviets have saved millions of man-hours and rubles in research and development via acquisition of this technology. Overall, the lack of CoCom resolve in this matter is deeply disturbing. The Commerce Department states that in 1982, 10 companies did in fact violate national security controls and were fined for their actions.

It is unfortunate that some of our CoCom allies have taken a rather liberal interpretation of the CoCom agreements limiting exports of critical national security goods and technologies to the Eastern bloc. Their aggressive trading attitude and the resultant export activities have eroded security for the entire Western bloc and contributed to an unfair trade situation for many firms in the United States.

The purpose of the import control penalty that I advocated in the Foreign Affairs Committee was to give the United States a strong new tool to deter and punish those companies and individuals which violate national security controls. By denying the right to import into the United States, we will be addressing the greed which motivated the sales in an appropriate manner.

This restriction when imposed would apply to those persons and companies which violate the Export Administration Act and could not

be interpreted to restrict imports from a country as a whole. The intent of this language is simply to penalize those companies who violate our CoCom agreements but not to extend United States law to other countries.

If the President were armed with this provision, those companies which continually breach the CoCom agreements would have second thoughts about activities of this sort. I also believe that were this to be implemented, the President would not need to invoke this provision as an everyday enforcement tool, nor do I think he would be so inclined. The deterrent effect which passage would bring about would certainly enhance our national security and hopefully decrease the amount of violations in this critical area.

The assertion has been made that this provision would broaden the extra-territorial application of the export violation. Only foreign companies granted a U.S. license or a subsidiary or affiliate of a U.S. company would be affected by this provision. I believe if we do grant a license for a manufactured goods or technology that is military sensitive or applicable, we should be able to enforce compliance to the terms of that license.

I am convinced that this is a serious problem which we must address. We must put CoCom violators on notice that their conduct is unacceptable and that we will take action to punish those who interpret export controls to their advantage at the expense of Western security goals. I submit that this provision would complement and strengthen CoCom rather than weaken or damage it. Denial of import authority would serve to underscore the gravity with which we view this continual leakage. The import penalty provision that I have suggested is a means of correcting the untenable situation that presently exists. Such actions would be beneficial not only to the United States, but to the entire Western bloc as well.

OLYMPIA J. SNOWE.

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